

DEPARTMENT OF VETERANS AFFAIRS OFFICE OF
RESOLUTION MANAGEMENT AND THE OFFICE
OF EMPLOYMENT DISCRIMINATION COMPLAINT
ADJUDICATION

HEARING
BEFORE THE
SUBCOMMITTEE OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS
FIRST SESSION

SEPTEMBER 30, 1999

Printed for the use of the Committee on Veterans' Affairs

Serial No. 106-24



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 2000

63-508CC

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-060578-4

COMMITTEE ON VETERANS' AFFAIRS

BOB STUMP, Arizona, *Chairman*

CHRISTOPHER H. SMITH, New Jersey	LANE EVANS, Illinois
MICHAEL BILIRAKIS, Florida	BOB FILNER, California
FLOYD SPENCE, South Carolina	LUIS V. GUTIERREZ, Illinois
TERRY EVERETT, Alabama	CORRINE BROWN, Florida
STEVE BUYER, Indiana	MICHAEL F. DOYLE, Pennsylvania
JACK QUINN, New York	COLLIN C. PETERSON, Minnesota
CLIFF STEARNS, Florida	JULIA CARSON, Indiana
JERRY MORAN, Kansas	SILVESTRE REYES, Texas
J.D. HAYWORTH, Arizona	VIC SNYDER, Arkansas
HELEN CHENOWETH, Idaho	CIRO D. RODRIGUEZ, Texas
RAY LA HOOD, Illinois	RONNIE SHOWS, Mississippi
JAMES V. HANSEN, Utah	SHELLEY BERKLEY, Nevada
HOWARD P. (BUCK) McKEON, California	BARON P. HILL, Indiana
JIM GIBBONS, Nevada	TOM UDALL, New Mexico
MICHAEL K. SIMPSON, Idaho	
RICHARD H. BAKER, Louisiana	

CARL D. COMMENATOR, *Chief Counsel and Staff Director*

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

TERRY EVERETT, Alabama, *Chairman*

BOB STUMP, Arizona	CORRINE BROWN, Florida
FLOYD SPENCE, South Carolina	BARON P. HILL, Indiana
STEVE BUYER, Indiana	TOM UDALL, New Mexico

CONTENTS

OPENING STATEMENTS

	Page
Chairman Everett	1
Hon. Corrine Brown	2
Prepared statement of Congresswoman Brown	23
Prepared statement of Congressman Evans	24

WITNESSES

Brickhouse, Eugene A., Assistant Secretary for Human Resources and Administration, Department of Veterans Affairs, accompanied by Ventris C. Gibson, Deputy Assistant Secretary for Resolution Management, Department of Veterans Affairs; and Charles R. DeLobe, Director, Office of Employment Discrimination Complaint Adjudication, Department of Veterans Affairs	12
Prepared statement of Mr. Brickhouse	43
Dyer, Kathleen, Principal, Booz Allen & Hamilton Inc., accompanied by Elaine Brenner and Jan Bayer, Associates, Booz Allen & Hamilton Inc.	3
Prepared statement of Ms. Dyer	25
Hadden, Carlton, Acting Director, EEOC Office of Federal Operations, U.S. Equal Employment Opportunity Commission	7
Prepared statement of Mr. Hadden, with attachment	34

MATERIAL SUBMITTED FOR THE RECORD

Statement of Federal Labor Relations Authority	9
<i>Pre-hearing written committee questions and their responses:</i>	
Chairman Everett to Department of Veterans Affairs	53
<i>Post-hearing written committee questions and their responses:</i>	
Chairman Everett to Department of Veterans Affairs	54

**DEPARTMENT OF VETERANS AFFAIRS OFFICE
OF RESOLUTION MANAGEMENT AND THE
OFFICE OF EMPLOYMENT DISCRIMINATION
COMPLAINT ADJUDICATION**

THURSDAY, SEPTEMBER 30, 1999

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.**

The subcommittee met, pursuant to call, at 10 a.m., in room 334, Cannon House Office Building, Hon. Terry Everett (chairman of the subcommittee) presiding.

Present: Representatives Everett, Brown, Hill and Udall.

OPENING STATEMENT OF CHAIRMAN EVERETT

Mr. EVERETT. The hearing will come to order.

Good morning. This Oversight and Investigations Subcommittee hearing will examine how VA has implemented Public Law 104-115, the Veterans Benefit Act of 1997, with respect to the EEO complaint resolution system.

The Public Law codified H.R. 1703 the Department of Veterans Affairs Employment Discrimination Prevention Act which I introduced with our full committee Ranking Democrat Member Lane Evans. The bill was cosponsored by the full committee Chairman Bob Stump; Jim Clyburn, former Ranking Democratic Member of this subcommittee; full committee Chairman Member Mike Bilirakis; and Steve Buyer, a member of this subcommittee, and also the Chairman of the personnel committee on House Armed Services.

The bill and the Public Law established within the VA the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication, which operate independently from field facilities and headquarter offices. Each of the new organizations is headed by a director who is solely responsible for all complaints of unlawful employment discrimination and any associated complaints of reprisal.

For years this subcommittee heard over and over again how the previous system for resolving employment discrimination complaints did not work. It was the perception of too many men and women of the VA that senior management within the Department were not held accountable for their actions, and too often did not take the EEO process seriously. I stated 3 years ago in a subcommittee hearing that I intended to assure that the VA zero toler-

ance policy translated into an EEO organization in which employees can have confidence. This remains my intention.

I also continue to insist that those managers, supervisors and senior officials who have sustained allegations of employment discrimination against them are held accountable for their unlawful act. The ORM and Office of Employment Discrimination Complaint Adjudication has been in operation for a little over a year. Today we will hear about the VA's efforts to restore confidence in the system that is supposed to resolve employment discrimination and complaints and hold transgressors accountable.

Our witnesses today will be representatives from the consulting firm Booz Allen & Hamilton; the Equal Employment Opportunity Commission; and the VA.

At this point, with the wonderful timing that she has, I will now recognize the Ranking Democratic Member Ms. Brown for an opening statement.

OPENING STATEMENT OF HON. CORRINE BROWN

Ms. BROWN. Thank you, Mr. Chairman. Employment discrimination is a plague on America's work force. A major effort to eradicate that plague at the Department of Veterans Affairs and establish an organizational model for the Federal Government began in 1997. It started with this subcommittee's hearing in response to reports that VA's EEO complaint resolution system did not adequately protect victims of sexual harassment. As a result of the 1997 hearing, Congress directed the Secretary of Veterans Affairs to take steps to ensure that the VA's complaint resolution system was administered in an objective, fair and effective manner.

It is too early to assess the full impact of the Veterans Benefits Act of 1997. It is important, however, Mr. Chairman, that we hold this hearing today to assess the steps VA has taken to restructure its complaints processing operation. I want to particularly thank you for your attention to this area.

[The prepared statement of Congresswoman Brown appears on p. 23.]

Mr. EVERETT. Your predecessor, Mr. Jim Clyburn, has been a great help in obtaining the legislation which was eventually passed.

I would like to welcome all of our witnesses testifying today, and I ask each witness to limit their testimony to 5 minutes. The complete statement will be made part of the official hearing record. The panel will hold the—the Members will hold their questions until the entire panel has testified.

I anticipate a fast hearing. I have read over the statements, and I am very pleased with the progress so far. You say that it is just a year, which may be too early to tell, but I certainly think that we are moving in the right direction.

I would now like to welcome Kathleen Dyer of Booz Allen & Hamilton, accompanied by Elaine Brenner and Jan Bayer, associates from Booz Allen & Hamilton.

Mr. Udall, would you like to make an opening statement?

Mr. UDALL. I would pass on the opening statement. Thank you, Mr. Chairman.

Mr. EVERETT. You are welcome to proceed, Ms. Dyer.

STATEMENT OF KATHLEEN DYER, PRINCIPAL, BOOZ ALLEN & HAMILTON INC., ACCOMPANIED BY ELAINE BRENNER AND JAN BAYER, ASSOCIATES, BOOZ ALLEN & HAMILTON INC.

Ms. DYER. Good morning, Mr. Chairman and committee members. On behalf of Booz Allen & Hamilton, I am pleased to appear before the Subcommittee on Oversight and Investigations to testify on our study to assess the administration and effectiveness of the new Equal Employment Opportunity complaint resolution system at the Department of Veterans Affairs.

I would like to begin by providing some background to our study. Among the actions Congress required through passage of Public Law 105-114 was that VA hire an independent contractor to conduct an assessment of its programs for improving the EEO environment and its approach to processing EEO-related complaints. In response to this congressional mandate, VA hired Booz Allen & Hamilton in March 1998 to conduct that assessment. The scope of Booz Allen & Hamilton's study was to assess the effectiveness of the new EEO complaint resolution system. To clarify, Booz Allen was not tasked with assessing whether discrimination and/or harassment persists in the environment.

Today's testimony is organized by key research questions that formed the basis of our assessment. In this testimony, we will address each of the key areas that Congress has identified in the Public Law.

Additional details pertaining to the findings summarized in the testimony can be found in our written testimony and in Booz Allen's final report to Congress of April 1999.

First, to what extent is VA effective in training EEO intake specialists, counselors, and investigators? Our conclusion is that ORM provided comprehensive introductory training to its EEO intake specialists, counselors and investigators. However, staff need at the time of our report additional training in key performance areas. ORM recognizes this need and is developing solutions to provide staff with additional training.

Second, to what extent is VA effective in training and educating supervisory and nonsupervisory employees about a new CRS? We found that there is inconsistent quality in the EEO-related training provided to employees throughout VA. This inconsistency pertains to training on a new CRS as well as other types of EEO training and can largely be attributed to the experience levels of the instructors as well as a variation in the depth of the training provided. It should be noted, however, that EEO training is provided by facilities staff, not ORM.

Third, to what extent is VA effective in administering the CRS? The establishment and administration of ORM and OEDCA are consistent with organizations that are in development. We found that ORM and OEDCA have developed or are in the process of developing the administrative mechanisms necessary for successful operation of the CRS.

Fourth, to what extent are the programs and mechanisms in place to evaluate the effectiveness of the CRS? ORM is in the process of developing a performance management and measurement system that includes outcome measures for focused mission accomplishment, output measures that provide an indication of progress,

and activity measures that indicate whether work processes are effective and efficient.

Fifth, to what extent is VA's CRS effectively collaborating related programs, procedures, and activities? Overall we found that ORM does not routinely collaborate with staff on EEO-related programs at VA facilities. The lack of coordination with related programs could inhibit effective complaint processing and resolution at the lowest levels.

Sixth, to what extent is VA effective in issuing and enforcing disciplinary measures and using these measures as deterrence for other employees? The current structure places the responsibility for administering disciplinary and adverse actions in response to EEO offenses on facility management. OEDCA is able to propose that discipline be considered; however, facility management makes the final decision. We found that while VA has made strides in ensuring that discipline is applied appropriately, the effectiveness of VA disciplinary measures as deterrence is still limited. Limitations are imposed by lack of accurate information and disbelief that discipline is fairly administered.

This concludes our testimony on our assessment of VA's CRS relative to objectives set forth in Public Law 105-114.

In closing, based on our overall assessment, we found that VA's CRS has made notable strides in certain areas, such as working toward achieving its mission, providing initial training for ORM staff, and establishing administrative procedures to guide the program. Given that CRS, ORM and OEDCA are in their infancy, it is our opinion that suitable progress has been made towards developing an effective process and governing organization.

Thank you, Mr. Chairman.

Mr. EVERETT. Thank you very much for that testimony.

[The prepared statement of Ms. Dyer appears on p. 25.]

Mr. EVERETT. Did Booz Allen & Hamilton find that employees are still concerned about retaliation for filing discrimination complaints?

Ms. DYER. I think the general answer to that is yes, but there is optimism among the employees. There is some promise for improvement with the new system. Generally among the supervisory employees, the optimism was not as great.

Mr. EVERETT. This came about as a result of legislation, Public Law 105-114. Does Booz Allen & Hamilton have any recommendations for changes in the law?

Ms. DYER. At this time, no. We think that the program needs to evolve. It is too early to recommend any changes in the law.

Mr. EVERETT. Based on your study, which issues would you suggest as candidates for review and oversight in 2 years or 1 year? Would you say 2 years?

Ms. DYER. With regards to oversight, I would think that some of the areas that you would want to look closely at are timeliness with regards to the processing of complaints and the resolution of complaints. The relationship between ORM and the other EEO components in the Department of Veterans Affairs, and the area of performance measurements, to be sure, that, in fact, the outcome measures, the processes and the workload and the management of that continues to be as effective as it has been in the first year.

Those would be perhaps the three areas where oversight would be important.

Mr. EVERETT. Would you suggest we look at it in a year or 2 years?

Ms. DYER. I would say at the end of another year. Some cases should be resolved, and that might be a good time to see how effective it has been in regards to timeliness.

Mr. EVERETT. What outstanding issues with regard to the new complaint resolution system need to be addressed by the VA?

Ms. DYER. As I indicated in my previous response, with regards to oversight, the relationship issue will have a significant impact in terms of cultural changes within the VA. That is an area that needs to be addressed continuously in terms of ORM relationship with the rest of VA's management, facilities management, as well as other EEO-related organizations.

Mr. EVERETT. Has VA implemented any procedures in the new complaint resolution system which holds management accountable for sustained allegations of employment discrimination?

Ms. DYER. The answer is yes, and I will ask Jan Bayer to talk about the procedures to which facilities managers have to report.

Ms. BAYER. The VA has put into place a process by which senior managers at VA facilities need to submit a report to human resources and administration outlining any action that they have taken in response to findings of intentional discrimination or harassment. So this encourages the senior managers to respond and document the response that they have taken.

Additionally, any time a senior manager is found or is accused of discrimination or harassment, a response team is sent out to investigate it, and that response team is typically comprised of staff from ORM and other—occasionally HR and OEDCA.

So those are two measures that the VA has taken to encourage senior management response and involvement with EEO.

Mr. EVERETT. Based on your study, if we were in grade school, what grade would we give the VA, A, B, C or D?

Ms. DYER. We have talked about this before just in those terms, and we would give them an A minus. They are a young organization, but have made significant strides over the last year.

Mr. EVERETT. Based on your study, what is your assessment of VA top managers of the new complaint resolution system?

Ms. DYER. I will ask Jan, who is project manager on the study, to also respond to that, but the feedback that I have gotten is that they have been very proactive, quick study, open to suggestion.

Ms. BAYER. I would give both the DAS of ORM and the Director of OEDCA an A. They have been extremely proactive and have actively solicited our feedback. We met several times with the DAS of ORM, and she solicited our feedback on improvements that could be made, and quickly made those improvements.

We found her to be an effective manager both in terms of the performance measures that she has established for her staff, and in terms of reviewing her staff's performance. Unlike many managers in the Federal Government, she has not been afraid to relieve staff who are not performing and to replace them with staff who are performing, so we have found her to be very effective.

Mr. EVERETT. Thank you, ladies.

Ms. Brown.

Ms. BROWN. Just one quick question.

This is probably the first A the VA has gotten since we have been here this year. This problem is not just with VA, it is kind of a systemwide problem. What were your recommendations; is this a model that we can take to other agencies?

Ms. DYER. Yes, I will ask Jan to talk about that more, too. It is really a model that goes beyond just simply responding to regulations and the law per se. It is a model that appears to be leading edge with regards to best practices.

Ms. BAYER. As part of our study, we did conduct interviews with staff who were from organizations deemed to be best practices, both in the private sector and the public sector. VA and ORM in particular are utilizing practices that go above and beyond those of the best practices organizations. A couple of examples. One, ORM has been looking into not only the patterns of discrimination complaints, but the root causes of those complaints, and this process is being formalized currently, and that is beyond, as Kathleen said, the Equal Employment Opportunity Commission requirements and those of best practices.

Additionally, they are tracking a lot of information, and the organizational structure is superior to those of many other EEO organizations. So we do think that they would serve as a model.

Ms. BROWN. Thank you. I yield back the balance of my time.

Mr. EVERETT. Mr. Udall.

Mr. UDALL. Thank you, Mr. Chairman.

I was very interested in your reported observations of an unforeseen by-product of requiring the VA to establish an independent EEO complaint resolution system. You found that the ORM does not routinely collaborate with staff on EEO-related programs at VA facilities. Additionally you found that the relationship between ORM and facility EEO staff was sometimes strained. What—would you elaborate on the impact that these natural tensions have on complaint resolution effectiveness, and how would you recommend that the various programs be clarified?

Ms. DYER. This is an organization that is very young, and in its first year it was primarily focused on organizing itself and getting its feet on the ground. There have been measures in establishing these relationships. Jan can perhaps talk more to that.

Ms. BAYER. The two relationships that we found to be most critical are between ORM and the facility managers and ORM and the EEO program managers.

We conducted several site visits. In the site visits we heard mixed reactions from those parties about the relationship with ORM, so it does seem to vary.

Some of the potential problems that can arise from a strained relationship would be resistance on the part of the on-site staff to provide information to ORM that they need to resolve complaints. So that could impede the process.

Additionally, if there is resistance from the facility, the culture of the facility may not be as beneficial as we would like. So in terms of eliminating discrimination, that may impede that as well.

In terms of solutions, we would recommend that ORM conduct regular meetings with all facility managers and EEO program

managers. In some cases there were such meetings, and in other cases there were not. So we would recommend that be standardized across the VA to improve the relationship and that they work together to look at trends and complaints and how discrimination could be further reduced.

Mr. UDALL. How regularly were they meeting throughout the agency do you think?

Ms. BAYER. It really varied. I wouldn't be able to answer that question. In some cases ORM would communicate on a frequent basis with the facilities staff. In other cases there was little communication.

Mr. UDALL. Have they committed to go forward with this recommendation?

Ms. BAYER. They are in agreement that interactions need to improve. I don't know what steps have been taken.

Mr. UDALL. Thank you very much.

Mr. EVERETT. Ladies, thank you very much for your testimony today. It is very encouraging to us. As Ms. Brown said, we hope for the best in working toward a better VA to serve our veterans.

Also, I want to thank you because your testimony was both direct, short and to the point. We don't get that a lot here. Thank you very much.

Ms. DYER. Thank you.

Mr. EVERETT. Now we would like to recognize the panel of Carlton Hadden, Acting Director, Office of Federal Operations, Equal Employment Opportunity Commission.

Mr. Hadden, thank you for appearing today, and you may proceed.

**STATEMENT OF CARLTON HADDEN, ACTING DIRECTOR, EEOC
OFFICE OF FEDERAL OPERATIONS, U.S. EQUAL EMPLOY-
MENT OPPORTUNITY COMMISSION**

Mr. HADDEN. Thank you, Mr. Chairman. Good morning, Mr. Chairman and members of the committee. We appreciate the opportunity to appear before you today.

What I want to do is cover very briefly what our testimony, which has been included as part of the record, will provide. We will talk about the EEO's oversight responsibilities and also look at some of the things that we have found in our study of the VA.

The Commission is responsible for providing oversight and guidance to Federal agencies and is also responsible for the Federal employment programs. The office which handles that for the Commission is the Office of Federal Operations. We accomplish that through providing technical assistance and on-site visits. We also provide guidance to administrative judges, adjudicate appeals.

The Federal EEO process is one which is governed by 29 CFR Part 1614. Essentially that process requires as a first step that EEO counseling be provided to complainants. Agencies investigate complaints and issue decisions on the merits or otherwise resolve and dismiss complaints.

Complainants may request a hearing from one of our administrative judges, and they also may appeal that decision from the agencies.

Effective November 9, 1999, the Commission will change its regulations for processing EEO complaints. We believe that these changes will result in a process which is much more effective, efficient and fairer. The process will provide a positive impact on the entire complaint process. Key changes as a result of these regulation changes are that we will eliminate unnecessary layers and address unfairness throughout the process. We will require ADR throughout the process. We are enhancing the authority of our administrative judges. We are reducing the fragmentation of cases, eliminate multiple appeals and streamline the appellate review process.

The regulation change is not the only initiative that the Commission is employing. We are employing what we are calling the comprehensive strategic enforcement model. Essentially what that does is we link our hearings and appeals function with very strong oversight and technical assistance and educational initiatives.

We believe that this will let us get to a much more aggressive posture in terms of hopefully getting to the point where we are preventing EEO disputes from arising in the Federal Government. Increased resources always help us achieve that goal more effectively.

Another key initiative that the Commission is employing is interagency task force. The EEOC will have interagency task force. We will employ a broad group of stakeholders. Again, the goal is to be innovative and increase fairness, efficiency and effectiveness of the process. We are going to improve data collection. We are going to have some pilots. VA is one of the agencies which has agreed to participate with that process, and they have identified two staff members to work on dispute prevention and early dispute resolution. They have proposed to partner with the Commission and have studied looking at cost per complaint models which will hopefully lead us to some good results in terms of EEO forecasting, looking at prevention methodologies and also GPRA performance measures.

Since 1997, when EEOC last attended an oversight hearing, clearly VA has changed its structure. They have changed from having the EEO function at the field directors to a higher level in headquarters. The VA has incorporated ADR at any stage of the process. We believe that those are commendable results. One thing that the VA also submits to us is their affirmative employment accomplishments reports, and the most recent report that we have from them shows that they plan to update their policy manual for the procedures for handling formal sexual harassment complaints, and each new employee will receive 4 hours of sexual harassment training.

We have studied the Booz Allen & Hamilton report. We agree with their assessment that they are making good progress; however, it is too soon to assess the impact of structural revisions. The Commission would like to assess their changes ourselves and hopefully come to some conclusion of the results in 6 to 8 months.

That concludes my summary of the testimony, Mr. Chairman.

Mr. EVERETT. Thank you very much.

[The prepared statement of Mr. Hadden, with attachment, appears at p. 34.]

Mr. EVERETT. I conclude from your testimony that you feel that at this stage, the new organization in the VA, that they are on track; is that correct?

Mr. HADDEN. Yes, Mr. Chairman.

Mr. EVERETT. Could you explain the difference between the EEOC and FLRA regarding employment representation?

Mr. HADDEN. The general counsel of the Federal Labor Regulations Authority, that is an independent agency just as the Commission is, we have essentially no control over them. There is a dispute, and that is troubling to the agencies and to our stakeholders. The Commission has been in dialogue with FLRA to try to help agencies get some guidance as to how to handle this.

Mr. EVERETT. Well, could you elaborate on what that—what the dialogue is and what is actually being done?

Mr. HADDEN. The FLRA has responsibility for labor relations. The Commission's responsibility is EEO. So we are coming from two different avenues, two different perspectives. To the extent that FLRA is doing what they should do in its control, and it is in conflict with the Commission's guidance, we are trying to discuss and have some guidance we can give to agencies.

Mr. EVERETT. Can you pinpoint that conflict for us?

Mr. HADDEN. I am not really prepared. Federal Labor Relations Authority, that is their expertise. Essentially it governs the question of the confidentiality of the process. Again, I am feeling a little out of the water here because that is clearly an FLRA GC responsibility.

I am happy to answer any questions about EEO, but to that extent—

Mr. EVERETT. Could you provide that for the record if you find out pursuant to what that is?

Mr. HADDEN. Yes.

[The information follows:]

Statement of FLRA General Counsel Guidance

On January 26, 1999, the General Counsel of the Federal Labor Relations Authority issued guidance to all federal agencies regarding bargaining over equal opportunity matters. While the guidance covers many labor-management topics, the one area that has generated the most interest is the part of the guidance that indicates that agency management has a duty to inform the union when they are discussing the settlement of a discrimination complaint with an employee.

The Commission's regulations at 29 C.F.R. Part 1614.605 permit an individual to designate a representative which may, at the individual's discretion, include a union official. In those instances in which the individual does not designate a union official as a representative, especially where the individual does not want the union to be aware of the discrimination complaint, the question arises as to whether the guidance requires the agency to inform the union of the discrimination complaint and give them the opportunity to be present at any settlement discussions.

The Commission has not taken a formal position on this matter. Commission staff is meeting informally with FLRA staff to discuss the guidance and to advise EEOC what position or action to take on this matter.

Mr. EVERETT. EEO's current backlog is currently 2 to 3 years, and the agency has not been given any additional budget increases for the new fiscal year. Yet a new EEO regulation effective November 9, 1999, requires additional review by EEOC if an agency rejects EEOC's determination. How is this additional layer of review going to affect your backlog?

Mr. HADDEN. I would characterize it not as an additional review. We currently have that responsibility.

Resources is always a critical issue for any agency. There are other advantages to these new regs which we believe taken in whole, it will help us get to a much better result. As I mentioned previously, ADR is a key component, and also a concept called case fragmentation will help us address the resource question.

Mr. EVERETT. Thank you. Ms. Brown.

Ms. BROWN. I am going to just ask one question because we have two other Members.

You noted in 1998 the number of VA complaints was significantly reduced from the two previous years and well below the governmentwide average. Would you speculate as to what this means and why it might have occurred?

Mr. HADDEN. Sure. And I would preface it by saying that it is speculation because the Commission has not had the opportunity to examine that.

It could mean a number of things, but we are hoping that there is greater confidence in the complaint reforms which have been instituted at the VA. And it is commendable in comparison to other Federal agencies how they have, in fact, decreased the number of complaints and shortened the time that it takes to get a complaint through the process. I believe that the VA is an agency that it—there is a time period, 30 days, to get through counseling. VA handles that. All of these people, 100 percent of them get counseled within 30 days, which is a very, very good accomplishment. Most Federal agencies are in the range of 45 percent. They do a great job.

Ms. BROWN. Thank you.

Mr. EVERETT. Mr. Udall.

Mr. UDALL. Thank you, Mr. Chairman. I was pleased to see that your regulation change will require agencies to institute alternative dispute resolution programs and make them available to resolve disputes throughout the complaint process. That change will provide the incentive the VA has long needed to strengthen its alternative dispute resolution program.

Would you elaborate what you learned about mediation as a fair and efficient voluntary mechanism for resolving discrimination claims to the satisfaction of both parties?

Mr. HADDEN. Certainly. We have had great success on the private side of the Commission. We have had a voluntary remediation program which has been extraordinary in terms of helping us get to some of these issues, backlog questions, and allowing us to use our resources at a key point of helping to focus on those tough cases.

We are hoping and planning to draw upon that experience we have had on the private side and use that for our experience for our colleagues in the Federal community. The Commission wants to learn from that part and have those same lessons apply to the Federal sector.

Mr. UDALL. Do you anticipate or have any prediction about numbers that you may be able to resolve short of going through a final process?

Mr. HADDEN. I wish I could assure you that I do, but I don't. At this point it is speculative. Again, just because of the combination, not just ADR, but the whole change in the regulations will require a mind shift for Federal employees and EEO specialists. We are hoping over the long term that there will be a significant reduction.

Mr. UDALL. Thank you very much.

Mr. EVERETT. Mr. Hill.

Mr. HILL. Thank you, Mr. Chairman.

It was good to hear that in 1998 VA was counseling 100 percent of its requests within the 30-day standard, and it is far better than the governmentwide average. I hope that you find that VA's new EEO organizational structure did not affect that level of service. What is your view on this?

Mr. HADDEN. I want to make sure that I understand the question, Congressman.

Your question is whether or not, by getting the complaints resolved 100 percent within 30 days, that has not adversely impacted on their—

Mr. HILL. The new EEO organizational structure, do you think that is going to adversely affect this commendable record?

Mr. HADDEN. We see no reason why it should. The message is correct. We are hoping that it won't. Again, it is premature to make an assessment.

Mr. HILL. Okay. I appreciate your offer to provide this subcommittee with your assessment of the changes in 1999 when that data becomes available, and I look forward to hearing from you.

Mr. HADDEN. Thank you.

Mr. EVERETT. Thank you very much.

I would now like to call panel three. I welcome Mr. Eugene Brickhouse, Assistant Secretary for Human Resources and Administration, Department of Veterans Affairs, accompanied by Ventriss Gibson, Deputy Assistant Secretary, Resolution Management, and Charles DeLobe, Director, Office of Employment Discrimination Complaint Adjudication, Department of Veterans Affairs.

Mr. Brickhouse, let me go into one of our soft spots of the day. I would like to make a point, and I think Ms. Brown has something to say after I do.

I hope to address a recurring problem this subcommittee has regarding VA responses to congressional correspondence. Let me read something to you. This is from the March 7th hearing that we had.

"Mr. Everett. I want to know why it took the VA more than 5 months to answer my letter?" and then I say that "VA has a system of central office called EDMS for tracking correspondence, and I want to know who at the Department had the reply to my letter and how long. Finally, I want to know what is the VA doing to ensure that this does not happen to not only this subcommittee chairman, but any subcommittee chairman again."

"Mr. Brickhouse. I will gladly provide for the record you answers to your specific questions, who and how long and what we are going to do about correction of the problem."

It was 7 months before I got that answer.

Let me just say I know that is not your fault, and I understand that. I will have to say, though, that we are sort of tired of asking for explanations, and we are simply not going to tolerate it any

longer. We are going to get to the bottom of it, and I want to say from this point on any letter that we send to the VA, every week we expect a response from the VA telling us what the action on that letter is.

I know that is a problem. I think I pretty much know where that problem is, and I guarantee at some point this subcommittee is going to do what it can to see that problem is cleared up.

Ms. Brown.

Ms. BROWN. I would like to associate myself with the remarks of this gentleman because I agree wholeheartedly that it is disrespectful to the committee that when we send letters and ask questions, we don't expect to take months to get a response. I have had some informal discussions about that just last week, and I am hoping that everybody in the VA can get the A that we want to give the committee here today.

Ms. Gibson, Mr. DeLobe, it is a rare pleasure for me to say you did a good job, you get an A, and I have the honor of doing that today. The way that you have implemented the 1997 EEO legislation reflects well on the agency. Through your actions, the VA has been elevated to the front rankings in leadership in the battle against workplace discrimination.

More important than that, your efforts have the potential of impacting positively on the lives of thousands of your fellow employees and the veterans that they serve for many years to come, and I just want to thank you all for doing that. Like I said, it is rare that I can truly say that we have received an A, but you get one today. Thank you.

Mr. EVERETT. And I would like to associate myself with those remarks, too. We are so pleased with the work that we have seen that you have done. Ms. Brown and I have a very good relationship, and we know that frankly we are in a position where we have to do a lot of fussing at folks, and we don't necessarily like that, but it happens to be our job to do that in the interest of veterans. And so it is a rare pleasure, as she said, when we are so pleased with what we see has been done on this effort that was started 3 years ago.

Mr. EVERETT. Mr. Brickhouse, if you will, please, please proceed.

STATEMENT OF EUGENE A. BRICKHOUSE, ASSISTANT SECRETARY FOR HUMAN RESOURCES AND ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY VENTRIS C. GIBSON, DEPUTY ASSISTANT SECRETARY FOR RESOLUTION MANAGEMENT, DEPARTMENT OF VETERANS AFFAIRS; AND CHARLES R. DeLOBE, DIRECTOR, OFFICE OF EMPLOYMENT DISCRIMINATION COMPLAINT ADJUDICATION, DEPARTMENT OF VETERANS AFFAIRS

Mr. BRICKHOUSE. Good morning, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to appear before you today.

Before I begin my oral statement, let me take a moment to introduce my colleagues at the table. To my right we have Mr. Charles DeLobe, Director of Office of Employment Discrimination Complaint Adjudication. To my left we have Ventris Gibson, Deputy Assistant Secretary for Resolution Management.

Seated behind me are Judge Guy McMichael, Chairman of the Board of Contract Appeals, who also, as you know, is our Department's expert on alternative dispute resolution; Mrs. Ellis Jones Hodges, Acting Deputy Assistant Secretary for Equal Opportunity; Mr. Ron Cowles, Deputy Assistant Secretary for Human Resources Management; and Mr. John Klein, Assistant General Counsel.

Mr. Chairman, I will keep my remarks very brief as you have my prepared written testimony for the record.

Mr. EVERETT. Without objection, it will be entered into the record.

Mr. BRICKHOUSE. Thank you.

Let me begin by commending you, Mr. Chairman, and this committee and its members and staff for your leadership in the transformation of VA's Equal Opportunity Complaint System. We have worked very hard to implement the provisions of Public Law 105-114, which established the ORM and the Office of Employment Discrimination Complaint Adjudication, something we call OEDCA.

I am also pleased to report to you that we are in compliance with 105-114. Prior to the enactment of the Public Law on the 21st of November, 1997, VA had received guidance from your committee and staff, and we had already begun to radically restructure the program in the VA.

Our plan for transformation and subsequent directives, which were consistent with the Public Law, called for separation of the EEO discrimination complaint program from field and headquarters facilities. It also called for removal of the EEO officer designation from facility director positions and creation of two independent organizations that we have already talked about. I am pleased to report that these two organizations are fully operational.

As this committee clearly recognized in developing the Public Law, communication is critical to the success of an endeavor of this nature. Under Mrs. Gibson's and Mr. DeLobe's leadership, we have used a variety of communication tools to announce the new complaint resolution process to VA employees. It included developing pamphlets, posters, memoranda, Vanguard articles, Websites, training videos, satellite broadcasts and facilities training.

Prevention of discrimination within the Department is a matter of extreme importance to Secretary West and VA managers. Prevention, of course, requires more than simply a change in how we process complaints, it requires innovative outreach activities. For example, these two organizations have published digests that help managers appreciate reasons for final decisions, and have identified root causes which contribute to those workplace disputes.

Throughout implementation, the Secretary of Veterans Affairs was mindful of concerns centered around sexual harassment. Our Secretary embraces a three-part fundamental principle which he calls prevention, executive action and executive accountability, and has communicated this requirement through an all-employee memorandum.

Another creative tool is alternative dispute resolution, something we call ADR. ADR is a way to resolve workplace issues in a more timely, less costly and less adversarial manner than legislation. A Department-wide directive in support of ADR will soon be issued.

The Equal Employment Opportunity Commission has been another important resource for them. We are working with them, as has already been mentioned, on several matters which we hope will result in additional prevention strategies and alternative dispute mechanisms that can be used throughout the Federal Government.

Mr. Chairman, I would like to also take the opportunity at this time to generally respond to the findings by Booz Allen & Hamilton, the contractor who completed the assessment of the Department's complaint resolution system. I want you to know that we studied the findings carefully and have been working on areas identified for improvement. We are most encouraged by their observation that VA's complaint resolution system is superior to best practices organization in both the Federal Government and the private sector. I will emphasize, however, this does not make us complacent; rather, it sets new standards for us to strive for.

The Office of Employment Discrimination Complaint Adjudication also has to successfully address all of the Public Law requirements relating to adjudication and is operating as the neutral and independent decisionmaker envisioned by your Public Law. The acceptance rate of recommended findings of discrimination by EEO administrative judges is evidence of its effectiveness in remaining neutral and independent from VA management. Since commencing operation, this organization has accepted in whole or in part approximately 64 percent of the EEOC recommendations as compared to our previous Department's history of acceptance of 20 percent.

Another frequent criticism of our formal EEO adjudication process was the huge backlog of cases awaiting final decision; and, consequently, the delays complainants experienced before receiving their decisions. I am pleased to report to you that OEDCA has significantly reduced that backlog and has also at the same time improved timeliness in processing cases.

Mr. Chairman, we believe that these collaborative efforts will ensure that the Department of Veterans Affairs is a leader in providing a working environment that is free of unlawful discrimination or harassment.

At this time my colleagues and I will be happy to answer any questions that you may have.

Mr. EVERETT. Thank you very much.

[The prepared statement of Mr. Brickhouse appears on p. 43.]

Mr. EVERETT. Apparently we have got a vote, but let me just briefly see if I can't get through my line of questions.

First of all, I share your enthusiasm. I think the ORM has the potential to be the best in government, and I certainly hope that you can be the best. It would be a great service to not only the veterans of this country, but to this Nation as well.

Has VA implemented any procedures of the new complaint resolution system that holds management accountable for sustained allegations of employment discrimination?

Mr. BRICKHOUSE. My answer to that is yes. As has been mentioned by the assessment group, we have established a rapid response team that deals with major problems when they impact the major leaders in our organization.

We also review those in headquarters and make recommendations to the Secretary and Deputy Secretary on decisions on those matters.

I might add, just recently the Secretary has reminded all employees of the importance of these new procedures both for supervisors and managers across the board in the VA. So I think the answer to that question is yes. Are we going to do more? Yes.

Mr. EVERETT. Has the VA quantified the costs of investigating and processing employment discrimination complaints?

Mr. BRICKHOUSE. I am going to ask Ms. Gibson to answer that after I give part of the answer. Yes, in our documentation we feel that formal complaints cost between \$40,000 and \$70,000 per case. We have collaborated with EEOC on this number, and they will provide documentation for that figure.

Ms. GIBSON. We believe in analyzing the cost per complaint. The most critical factor is to determine how much resources in the Department of Veterans Affairs' time as well as any litigation issues before the courts or before the EEOC actually takes money from the Department that could be wisely used in treating and caring for our Nation's veterans; and more importantly, promote resolution of those complaints.

The cost is roughly between \$40,000 and \$70,000. We recently set aside some funds for a research project so that we, in addition to our root costs capture these costs per complaint activities even in more detail and more accurately so we can proffer that information to our facilities to promote resolution.

Mr. EVERETT. I have some additional questions for the record, but we are so close to finishing that I am going to ask Mr. Hill if you have any questions.

Mr. HILL. One in particular, Mr. Brickhouse. The Equal Employment Opportunity Commission testified that one of the critical changes to its regulations is the requirement that all Federal agencies institute alternative dispute resolution programs, and that those programs be available to resolve disputes throughout the complaint process. I know that you are in agreement with the EEOC that alternative dispute resolution prevents undue delays, brings matters to closure quickly and gives satisfaction to the parties. The good news in your testimony is that VA is continuing its efforts to increase alternative dispute resolution use and has several ongoing dispute resolution initiatives.

Unfortunately, the bad news is that after talking the talk about alternative dispute resolution for most of this decade, nearly half of the VA medical centers and 80 percent of the benefits offices still do not have an operating alternative dispute resolution program. Additionally, Booz Allen & Hamilton reports that many VA employees do not understand what ADR is and therefore do not tend to select it as a complaint resolution option.

What assurance can you give me that next year at this time, 1 year from now, an active dispute resolution program will be fully implemented in every VA facility, and that all VA employees will be aware of the values and availability of alternative dispute resolution?

As a necessary follow-up to your assurances, I must add what assurances can you give this subcommittee that VA will commit the funds needed for such implementation efforts?

Mr. BRICKHOUSE. Let me start by saying as you well know, we are in strong support of ADR, and we need ADR. As Ms. Gibson just mentioned, that is a way to help us in preventing complaints, if you will. We already have pilot programs in ADR working in our system. We have one in the Bay Pines, Florida, area.

We are in the midst of embarking on some additional efforts that are going to be headed by Judge McMichael, a long-term VA employee who understands the culture of VA. We plan, through his efforts, to start some pilot programs in our headquarters area. And I am going to ask Ventris and Judge McMichael to add to this answer.

Your question about the budget, I think this committee and the managers—

Mr. EVERETT. Mr. Brickhouse, because of the length of that question, we are not going to be able to finish the answer and closing remarks before we have to make the vote. There are two votes, and the committee is recessed at this point.

[Recess.]

Mr. EVERETT. The hearing will come to order.

Please proceed.

Mr. BRICKHOUSE. To continue that answer, Mr. Hill, yes, we will continue to see that we have ADR throughout VA. I might add that you have given us a challenge, and I think we will be able to impact on our VA managers to find money to do this project. We have Judge McMichael here who is helping us. I am going to ask him to add some comments.

Mr. MCMICHAEL. We are certainly aware that we need to do more. We have been proceeding on developing these programs at a local level because it is more than just having an ADR program, it is having an ADR program that people trust and actually want to utilize. So we have put a lot of effort in having local facilities develop the programs and having our union partners participate in it. And where we have done that, we have been very successful.

On the other hand, we realize that we need to gather more information and disseminate best practices, and as a result of that, we have a national Department directive that will be going out shortly.

The Veterans Health Administration has hit the ground running early on this. And in May the Chief Network Officer sent out a directive and formed an ADR steering committee for all facilities. So I believe we will be able to, within a year, tell you that we do have functioning programs that are accepted by the employees and trusted by the employees in place at all VA facilities.

Mr. HILL. You do agree that half of the VA facilities and 80 percent of the benefits offices still do not have an operating alternative dispute resolution program?

Mr. MCMICHAEL. A number of the local facilities do not have ADR programs. That does not mean if a discrimination complaint were filed today and someone wanted to have ADR, that we could not provide an alternate dispute resolution for them.

Clearly programs that are functioning and developed at the local level that people have faith in is something that needs to be done, and there is a large number of facilities that at this point in time do not have functioning ADR programs.

Mr. HILL. But as a necessary follow-up, what assurance can you give to this subcommittee that VA will commit the funds for such implementation efforts?

Mr. MCMICHAEL. Winston Churchill once said that nothing concentrates the mind like being fired at. We recognize that you are looking at us, and we are going to have to come back and we are going to have to devote the funds. These are funds that are going to be devoted by the individual administrations because the administrations are the ones that are responsible for developing the ADR programs.

Mr. HILL. Ms. Gibson, how does ORM seek to strike the delicate balance between complainant confidentiality and providing the necessary information to facilities to meet Equal Employment Opportunity Commission objectives?

Ms. GIBSON. We have two principles concerning maintaining confidentiality. One is that we sought the legal guidance of the Office of General Counsel and the Equal Employment Opportunity Commission in that our role of providing information changed from the local level to a centralized environment under the Office of Resolution Management.

We published a standard operating procedure which, in fact, captures a 24-page legal guidance and specifically highlights and details what sort of information is available to the complainant, to the responsible management official and to representatives. That is augmented by the Privacy Act and the EEOC system of records.

Mr. HILL. Ms. Gibson and Mr. DeLobe, Booz Allen & Hamilton suggested that a tracking and communicate of disciplinary measures taken in response to EEO offenses might help to overcome employee beliefs that discipline is not fairly applied. What, if anything, is being done in this area?

Mr. DELOBE. OEDCA is not involved in the actual discipline process, and it would not be appropriate for OEDCA to be involved in that process. OEDCA does initiate the follow-up process when there has been a finding of discrimination or retaliation by reporting the matter to the Secretary. As soon as that report is made, a procedure kicks into place whereby the Department then tracks each of these cases to determine what discipline is taken, and the reports required by this procedure are then submitted to the Secretary and to the Deputy Secretary, as appropriate.

But as far as OEDCA's involvement, we are basically involved only at the initial stage where we initiate the follow-up process.

Ms. GIBSON. Within ORM, we have to be very careful in getting involved in disciplinary actions that are taken against senior executives or other management officials when there is a finding of discrimination, because ultimately those same officials could see the disciplinary action as illegal discrimination and file a complaint. So it would compromise our ability to be impartial if we were involved in that process.

Mr. HILL. Mr. Chairman, I have other questions, but for the sake of time, I think I will just enter them into the record.

Mr. EVERETT. We can do that or have a second round, either way.

Mr. HILL. Let's do a second round then.

Mr. EVERETT. Let me ask you, Mr. Brickhouse, can you give me an example—I don't want any names or anything, but can you give me an example of accountability of a senior official? Have you fired one? Has one been given 60-day or 92-day suspension? Give me just one example of how a senior official has been disciplined over a charge that was found to be true.

Mr. BRICKHOUSE. I think we do have some examples. I am just a little bit concerned about what I can say about a specific case. Let me provide another portal to that question.

For example, in our system when senior VA employees are recognized for bonuses and for awards and pay adjustments, we have a system whereby before they can receive those things that I just mentioned, that their records are reviewed with the IG and with ORM and OEDCA before we make those commitments to them. That is an example of something that we already have in place, and it is actually working today.

In regards to your second question, I would propose that we can answer that for the record, please.

Mr. EVERETT. Certainly.

(See p. 55.)

Mr. EVERETT. I understand that VA found 700 unreported employment discrimination complaints. What happened to those complaints? How in the world can you lose 700 complaints?

Mr. BRICKHOUSE. I will ask Ms. Gibson to help me answer the question. I can't speak to what happened to them, but we did find them and have dealt with them.

Ms. GIBSON. Thank you, Mr. Chairman.

One of the first things that we did when we opened our various ORM field offices and we went out to the VA facilities to transition cases from them to the Office of Resolution Management, it wasn't that facilities were hiding cases or the cases were lost, it was more that the cases were in various stages of the EEO process, but had not yet been reported to headquarters, or were caught in between the former Office of Equal Opportunity and the Discrimination Complaint Service under that organization and the Office of General Counsel.

That accounted for the bulk of the 700 cases. Then there were some, because of the ORM transition, some individuals didn't know what to do at that point and held onto the cases until ORM became operational. It was not that we found that the facilities were purposely hiding cases. That was not the case at all. It was somewhere in the process that would be involved in a transitional issue.

We have, in fact, taken on those cases, gotten them into the process. Those in which we did find some errors in processing, we got them back on track. We talked with complainants and ensured that they understood that the cases were being taken care of.

Mr. EVERETT. Was there a lapse of time there or—I am sorry, but I don't quite understand why those 700 cases were not—specifically why they were not recognized and reported to headquarters. What was going on to cause that not to happen, and does that system continue?

Ms. GIBSON. Actually the system does not continue because employees know that the Office of Resolution Management processes complaints of discrimination, number one.

Number two, if we became aware that a complainant did file a complaint with a facility and nothing has happened, we make sure that we get that case back on track.

I believe when we look at how we transitioned cases and the word that was coming from VA headquarters as to the change in how we would process complaints, there were vacancies in the field in the EEO program managers' occupations. Some cases were either being prepared to go forward for EEO hearing; others were being prepared to go between the counseling and the formal complaint process. So I don't think that it was intentional. I believe that it was purely oversight.

Mr. EVERETT. Mr. Brickhouse, what is the process for title 7 retaliation cases once they have been referred to the Secretary by OEDCA?

Mr. BRICKHOUSE. Mr. DeLobe deals with those title 7 cases.

Mr. DELOBE. Mr. Chairman, once I refer a case to the Secretary, the Secretary reviews and signs the memorandum that I have prepared for him, returns it to me, and then I forward that memorandum to the relevant Under Secretary, who is then charged with responsibility under the procedures which have been established by the Department to ensure that there is appropriate follow-up action and corrective action and disciplinary action, if appropriate. The Office of Human Resources Management creates a file, opens a file on that case, and then monitors the matter from there.

Mr. EVERETT. Let me interrupt you. Who is responsible for the follow-up?

Mr. DELOBE. The follow-up is the responsibility of the relevant Under Secretary, except in the case of senior officials where it is the responsibility of the Assistant Secretary for Human Resources and Administration.

Mr. EVERETT. Does VA have any recommendations for legislative change to Public Law 105-114?

Mr. BRICKHOUSE. At this time the answer to that question is no. However, as we implement those new EEOC changes that become effective November, we may come back and talk to your staff about some potentials in the future. But at this time the answer is no.

Mr. EVERETT. Please explain the new practices ORM has instituted and on the root cause analysis.

Ms. GIBSON. Thank you. We believe that the process itself—and we thank you for the Public Law. First of all, it professionalizes the occupation of EEOC specialist, the investigator and the counselor. Historically, these were collateral duty or ad hoc occupations.

We believe that our training program—we provided the committee with the training videos as an example, whereas before, as Booz Allen & Hamilton talked about, addresses the training inconsistency. ORM believed by developing one tape with supporting documents could be used as a consistent, uniform training tool. Through videoconferencing, alternative dispute resolution, which for us, even if the Department does not have a nationwide ADR program, we, in fact, within ORM have piloted successfully two mediation

programs which are available. Should a complainant at any VA facility choose the ADR process, we do have mediators available.

The root cause report is something that we believe—because a lot of complaints that are in the discrimination process are not discrimination cases, we thought that it would be a good tool for management to understand what was the underlying issue that gave rise to the complainant coming forward and alleging discrimination.

We have published three digests so far, and we just, in fact, awarded a research contract that will look at complaint activities and trends by suburban versus urban areas, how change impacts complaint processing. As an example, if there is a consolidation or service line integration, EEO complaints from that facility may go up slightly.

So that is one way. We take that root cause, look at the underlying cause of what is not discrimination, and provide it on our Website to VA facility managers nationwide. I can let you know what some of the underlying causes are. Sometimes we find that just simply a lack of communication between the supervisor and the employee can give rise to a perception of discrimination, so we encourage more communication. We highlight specific cases that show that if this had been handled another way, that, in fact, it would not have risen to the level of a discriminatory process.

We also have found that sometimes more training on the part of the employee or the supervisor, specifically with understanding the rules and regulations at a facility, and the promotion process is an example, would eliminate some of our complaints.

And sometimes there is just bad blood between people, and through ADR just sitting parties down and letting them talk it out and finding an adult, calm manner in which to accomplish resolution of the dispute is beneficial.

Mr. EVERETT. I am struck by the turnaround of acceptance rates of EEOC-recommended findings by OEDCA. Can you explain how that happened and why it is happening?

Mr. DELOBE. Mr. Chairman, as you know, independence was a key aspect of Public Law 105-114. Thanks to the committee, VA now has an independent adjudication unit. The Secretary has been very supportive of OEDCA and has ensured that we have been able to function independently not only in theory, but in fact. We have a very diverse, dedicated group of attorneys who feel free to come to me when they think a finding of discrimination is appropriate in a given case. So I think all of those factors play into it.

Essentially we have the independence to call them as we see them.

Mr. EVERETT. Booz Allen stated that current budgets are not adequate. How would you respond to that?

Mr. BRICKHOUSE. I feel, Mr. Chairman, for fiscal year 1999 and fiscal year 2000, if we get what we think we are going to get, we have an adequate budget to manage and operate the ORM program.

However, I am concerned because in the fiscal year 2000 budget, I understand there is some language that would cause ORM and OEDCA to be a part of GO&E in fiscal year 2001. We want to keep these monies on a reimbursable basis. As you can well imagine,

that gives our line organizations, VHA, VBA and the cemeteries, some incentive to deal with these cases. So in summary, today our budget is adequate. We want to keep it as it is, if you will.

Mr. EVERETT. Mr. Hill.

Mr. HILL. Thank you, Mr. Chairman.

Ms. Gibson, I want to compliment you on this. If more people in the Federal Government would be as proactive in their thinking as you are, I think the Federal Government would be better off. I am impressed with this and your thoroughness, and I just wanted to point that out.

I want to ask you what the current status of ORM's database tracking system is and when will it become fully operational?

Ms. GIBSON. We are actively working with the Veterans Health Administration networking officials as well as the Department's Chief Information Officer on ensuring our application program is a good program. It is state-of-the-art. EEOC has previewed it and found it to be an outstanding product. But the network which VA has needs to be refined, so we don't have as many hubs to communicate information to as we have presently. What happens is that it impairs our ability to transmit data electronically.

But I must tell you that the support that the Department has provided to us in making sure that we move toward having a network that is fully performing and that satisfies the needs that we have for system performance, we understand just in recent meetings with our networking officials and others that the system will be fully operational by the spring of 2000, and we are running beta tests all of the time, and we are seeing system improvements.

Mr. HILL. Booz Allen recommended that ORM establish a formalized mechanism for use in performance data to improve programmatic performance. What, if anything, is being done in this area, Ms. Gibson?

Ms. GIBSON. We developed a very in-depth strategic plan for the Office of Resolution Management. Having come out of an environment where we did measure performance under the Government Performance and Results Act, I was very familiar with what requirements and what measurements must be in place for the Office of Resolution Management to, in fact, not only be successful in quality and timely complaint processing, but also to contribute to the Department's goals of meeting the needs of our Nation's veterans.

We have actually six different performance measures, and one obviously is to continue on a road of improving the complaint processing timeliness, the quality of those complaints, full deployment of alternative dispute resolution, full compliance with the EEOC's regulatory time frames of 180 days, as well as fully deploying videoconferencing and, of course, our information resource management system full performance, as well as two other areas that we have mentioned earlier. One is the cost per complaint study as well as the core competency.

I believe, within any Federal agency, private or public organization, people must be held accountable for their work and their performance, and that has a direct link to the overall Department's performance. As such, my employees have due professional care standards. These standards require that they do their jobs com-

petently, that they are independent, that they are professional, and that, in fact, they plan for the results that they achieve. And part of that is rolled up into our strategic plan.

Mr. HILL. Thank you, Ms. Gibson.

Those are all of the questions that I have, Mr. Chairman.

Mr. EVERETT. Thank you, Mr. Hill.

I want to thank all of our witnesses today for giving the subcommittee the benefit of their testimony. I am encouraged and pleased by what I have heard today about the complaints resolution system, although 1 year is too soon to conclude that the VA has corrected all of the problems in the past. Employees still appear to be quite concerned about reprisals from supervisors and managers if they file a complaint. I can tell you that from a personal level, because my office is full of those letters and telephone calls, and I understand it.

This subcommittee will continue to monitor the progress of these two offices with respect to timeliness of complaint resolution, and competence and trust among the employees of the VA. However, even the best efforts of these two new offices to resolve employment discrimination complaints, if the VA does not hold its managers and supervisors accountable for acts of discrimination, the problems will continue because the culture will not have changed. And change it must. The good old boy system has got to go.

Thank you very much. The hearing is adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

APPENDIX

**CONGRESSWOMAN CORRINE BROWN
Opening Statement
Subcommittee Hearing
EEO Complaint Resolution in the
September 30, 1999**

Mr. Chairman, employment discrimination is a plague on America's workforce. A major effort to eradicate that plague at the Department of Veterans Affairs and establish an organizational model for the Federal Government began in 1997 with this Subcommittee's hearing in response to reports that VA's EEO complaint resolution system did not adequately protect victims of sexual harassment.

As a result of the 1997 hearing, Congress directed the Secretary of Veterans Affairs to take steps to ensure that VA's complaint resolution system was administered "in an objective, fair, and effective manner and in a manner that is perceived by employees and other interested parties as being objective, fair, and effective."

I realize that it is too early to assess the full impact of Public Law 105-114, the Veterans Benefits Act of 1997. It is important, however, Mr. Chairman, that we hold this hearing today to assess the steps VA has taken to restructure its complaints processing operation.

I appreciated the assessment of VA's new system that was made by Booz Allen & Hamilton and look forward to hearing their testimony. I thought their April 30, 1999, report was comprehensive and insightful, and that their recommendations were constructive.

I also look forward to hearing from the Equal Employment Opportunity Commission. Public Law 105-114 explicitly provided that the new law should be implemented in a manner consistent with EEOC regulations.

And of course, Mr. Chairman, I always look forward to hearing from the VA – especially when they have a positive story to tell, like today. All indications are that VA is headed in the right direction in ridding its house of employment discrimination and providing a work environment where employees are able to give our veterans the service they deserve without fear of reprisal.

Organizational restructuring is a good start but at best addresses only part of the total problem. I will be interested in hearing about VA's plans for developing fully operational programs of Alternative Dispute Resolution (ADR) at all of its facilities and learning how VA plans to inform all of its employees about the values of ADR.

Eradication of employment discrimination is a work-in-progress that requires Department commitment to the use of every weapon in its arsenal.

CONGRESSMAN LANE EVANS

**Opening Statement
Subcommittee Hearing
EEO Complaint Resolution in the VA
September 30, 1999**

Mr. Chairman, I want thank you and Ranking Member Brown for holding this important hearing.

In 1997, this Subcommittee re-examined the problems of employment discrimination – including sexual harassment in VA and VA's "zero tolerance" policy.

At that time, there was a general perception among VA employees that the Department's complaint resolution process was not functioning independently enough of local VA management to ensure fair and equal enforcement of the "zero tolerance" policy.

This morning's oversight hearing will begin assessing the effectiveness of the legislation that Congress adopted two-and-a-half years ago to address these chronic problems.

I realize that it is too early to see the full impact of the 1997 legislation, but I am encouraged with the direction in which VA is now headed with its restructured organization.

I want to echo the Ranking Member in saying that eradication of employment discrimination is a work-in-progress that will require the Department to commit even more resources for such programs as Alternative Dispute Resolution, if it is to have an effective complaint resolution system for its employees.

Congressional Testimony:**Booz-Allen & Hamilton's Assessment of the
EEO Complaint Resolution System in the Department of Veterans Affairs****September 30, 1999**

Introduction

On November 21, 1997, Public Law 105-114, the *Veterans Benefits Act of 1997*¹, was signed. Included within this Law, in Sections 101-103, was the requirement that the Department of Veterans Affairs (VA) take action to improve its equal employment opportunity (EEO) environment. Although VA had, in 1993, established a "zero tolerance" policy for sexual harassment and discrimination, concerns surfaced regarding compliance with that policy and the effectiveness of VA's complaint processing system. Among the actions Congress required through passage of the Law was that VA hire an independent contractor to conduct an assessment of its programs for improving the EEO environment and its approach to processing EEO-related complaints. In response to this Congressional mandate, VA hired Booz-Allen & Hamilton in March 1998 to conduct that assessment.

Per the mandate, the scope of Booz-Allen's study was to assess the administration and effectiveness of the new EEO complaint resolution system (CRS); to clarify, Booz-Allen was not tasked with assessing whether discrimination and/or harassment persist in the VA environment. Accordingly, the emphasis of our study was on the degree to which VA's new Office of Resolution Management (ORM), Office of Employment Discrimination Complaint Adjudication (OEDCA), and the system in general were functioning effectively.

At the project's onset, Booz-Allen developed a comprehensive set of ten research questions to address the overall intent of the assessment. Booz-Allen informed ORM, OEDCA, and Congress of the intended assessment areas to ensure that all parties agreed on the direction of the study. Upon obtaining agreement regarding this assessment focus, we developed data collection materials targeted at gathering information related to these combined assessment areas. Booz-Allen then conducted its data collection activities, which included focus groups, interviews, a documentation review, an employee opinion survey, a complaint activity trend analysis, a best practices study, a training evaluation, and a preliminary competency assessment. To gain a broad range of perspectives, we targeted our data collection efforts to a variety of audiences including ORM and OEDCA Headquarters staff, ORM Field Office staff, and VA facility staff. After analyzing a large quantity of qualitative and quantitative data, Booz-Allen prepared and delivered its Final Report to Congress on April 30, 1999.

Today's testimony is organized by the ten research questions that formed the basis of our assessment. A number of our research questions are directly aligned with seven key areas identified in Section 103 of Public Law 105-114—areas in which Congress was most interested in learning about VA's approach to improving the effectiveness of its CRS. In this testimony, we will address each of these key areas individually and will provide responses to how effectively VA is functioning, based on our independent assessment. In addition, we will address several other areas assessed, beyond those identified in the Public Law, that we felt would provide additional insight into the degree to which the CRS is functioning effectively. Additional details pertaining to the findings summarized in this testimony can be found in Booz-Allen's Final Report to Congress (April 1999).

Question 1.

The first of our ten research questions was *'how effective is VA's CRS relative to available standards?'*

¹ Amendment to Title 38, United States Code, to revise, extend and improve programs for veterans.

To address this question, we first compared the new CRS to the former complaint resolution system. Our data collection efforts indicate that VA's new CRS has effectively begun to address many of the problems of the previous EEO complaint resolution system, particularly employees' lack of trust in the system and the conflict of interest arising from having EEO staff who process complaints report to facility management. In establishing an independent organization that is dedicated to processing EEO complaints, VA has effectively removed the EEO complaint resolution process from under the control of local VA management.

In addition to comparing VA's CRS to VA's previous EEO complaint resolution system, we sought to compare the CRS against external standards, including Equal Employment Opportunity Commission (EEOC) standards and best practices organizations. From interviews with EEOC staff, it became apparent that EEOC criteria do not exist for comparison purposes. In comparison to organizations with known best practices in complaint resolution, we found that ORM is more advanced in terms of its organization, operating procedures, and data tracking capabilities.

Overall, we found that VA's new CRS effectively addresses problems inherent in VA's previous EEO complaint resolution system, and is superior in many ways to best practices organizations.

Question 2.

Our second question asked *'to what extent are ORM and OEDCA achieving their missions?'*

In evaluating the extent to which ORM and OEDCA are meeting their missions, we identified the key objectives of the newly formed organizations. We then assessed each of five key objectives to answer this question about whether ORM and OEDCA are achieving their missions.

Independence. The separation that exists between ORM, OEDCA, and VA facilities has allowed ORM and OEDCA to operate as independent organizations, and most of our findings indicate that this independence has had a positive impact on the CRS. The majority of VA employees and ORM staff queried has noticed the changes and believe that the new CRS has addressed many concerns present in the old system. However, some supervisory employees and Facility Directors expressed their concern that the separation between ORM and VA facility management will inhibit the early resolution of complaints. Others mentioned their concern that when ORM's staff lack familiarity with the facility's culture and norms, early complaint resolution may be impeded. In response to these concerns, we recommend that ORM evaluate the boundaries of their relationship with VA facility management and seek to identify what facilities need and want to know about the complaint process, thus enabling ORM to increase the effectiveness of the new CRS to the satisfaction of both ORM and pertinent facility staff.

Quality. ORM staff expressed their confidence that quality has improved under the new CRS. They indicated that they have several internal methods for measuring and ensuring quality services, and that these internal procedures have contributed to an overall improvement in quality. They also noted the reduction in EEOC remands as further evidence of quality improvement. VA employees were hesitant to judge the "quality" of the new CRS, but many agreed that the system was an improvement over the previous system.

Fairness, Integrity, and Trust. The current structure of ORM fosters increased fairness, integrity, and trust. Many of the changes made to the CRS have had a positive impact on the processing of complaints. VA non-supervisory employees and ORM staff have noticed the changes and believe that the new CRS has addressed many of the concerns VA had with the old system. Specifically, the addition of full-time staff and removing complaint resolution from the control of individual facilities has helped promote trust in the new system and the perception that ORM will administer the new system fairly and with integrity. However, some supervisory employees expressed their concern that the new CRS is biased in favor of the complainant. In a system where supervisory employees are likely to be identified as the Responsible Management Official (RMO) and thus feel victimized by the process, it is important that ORM representatives display the highest level of professionalism and understand the dynamic working against supervisors, as well as the needs and rights of the complainant.

Timeliness. While ORM has made some initial improvements in the timeliness of complaint processing, sufficient data are not available at this time to make a definitive determination of the impact of the new CRS on timeliness. Limited data are available on the timeliness of the new system, due to problems with VA's tracking of complaints under the previous system and the short timeframe in which the new CRS has been operational. To obtain a more accurate determination of complaint processing timeliness, we recommend that ORM continue to monitor workload and complaint activity data through Fiscal Year (FY) 99. This will enable ORM to determine the impact of additional variables such as case backlog, increased complaint filing, and staffing adjustments. By continuing to collect this information, ORM can determine the extent to which timeliness has been affected by the new CRS.

Alternative Dispute Resolution (ADR). ORM is in the process of developing a national ORM ADR policy/program to supplement the existing network of facility programs and clarify ORM's relationship and commitment to these programs. To date, many employees do not fully understand what ADR is; therefore, they do not tend to select it as a complaint resolution option. VA may experience earlier resolution of some EEO disputes once employees gain greater understanding of how ADR can be used in the complaint resolution process. We recommend that ORM work in conjunction with the facilities' On-site EEO Program Managers and, where available, existing ADR representatives, to develop outreach materials that clearly communicate information about ADR to all VA employees. Successful distribution of the information will serve to educate VA employees about what constitutes a valid complaint and what they can realistically expect from ADR.

In summary, we found that ORM and OEDCA are successfully meeting their mission objectives of independent operation; improved quality; fairness, integrity, and trust; and the offering of alternative dispute resolution (ADR). It is too soon to observe any impact of the CRS on timeliness.

Question 3.

Our third question was 'to what extent is VA effective in training EEO Intake Specialists, Counselors, and Investigators?', a question that pertains to Congressional interests a and b.

Prior to beginning their assignments, each key staff person was enrolled in an intensive, three-week training program that provided them with a basic understanding of the tools, knowledge, and skills they would need to begin performing their jobs. The training also included an orientation to the CRS process and an overview of ORM's purpose, goals, and expectations for its staff. The training was successful in developing key staff who could immediately begin performing their jobs and help ORM "jump start" the new organization.

The majority of the new hires participating in this intensive training were already familiar to varying degrees with EEO-related issues and VA's former complaint resolution process. It was important to ORM (and to the success of the new CRS) that these employees understand that ORM was a new organization, bringing a new and different approach to doing business, and that the old ways no longer applied. Based on our evaluation of the three-week training and subsequent interviews with key staff, we have concluded that ORM was successful in indoctrinating these key staff to the mission, goals, and objectives of the new organization and the new CRS.

It is doubtful that ORM will need to provide basic training to so many key staff at one time as was required for the initial start-up activities. Therefore, it is unlikely that this three-week course will be presented again in the same manner as was experienced by those key staff involved in the initial training. When providing training for new hires, ORM plans to use components of this three-week course (and others subsequently developed) appropriate to the level of new hires.

Based on their on-the-job experiences since the initial training occurred, key staff have identified – through this assessment and through ORM's own training needs survey – additional learning needs that will improve the quality of their job performance. ORM has since developed, or is in the process of developing, training courses aligned with these learning needs. ORM has also established a Training Lab at Bay Pines, FL that is dedicated to developing and delivering training to ORM staff, further demonstrating its commitment to providing professional growth opportunities for its employees.

Additionally, based on our preliminary assessment of the competencies necessary for each of ORM's key staff positions, it appears that ORM's approaches to hiring, evaluating, and training its key staff are compatible with one another. Booz:Allen is currently undertaking a more extensive competency assessment in order to develop competency models for each ORM staff position.

It is recommended that ORM continue to identify learning needs and provide staff with ongoing, targeted training opportunities. In addition, Booz:Allen recommends that ORM conduct follow-up evaluations of staff to determine the extent to which they are exhibiting learned behaviors on the job. Finally, to provide newly-hired staff the learning, bonding, and networking opportunities that benefited key staff who participated in the initial three-week training, we recommend that ORM establish a mentoring or buddy program.

Our overall conclusion is that ORM provided comprehensive introductory training to its EEO Intake Specialists, Counselors, and Investigators. However, staff need additional training in key performance areas. ORM recognizes this need and is developing solutions to provide staff with additional training opportunities.

Question 4.

Our fourth question asked *"to what extent is VA effective in training and educating supervisory and non-supervisory employees about the new CRS?"*, a question that pertains to Congressional interest c.

We found that numerous approaches are undertaken by the facilities to provide EEO-related training to employees. While some facilities may have access to experienced instructors, it appears that others do not. In addition, the content and depth of the training varies depending upon the resources from which information is obtained to construct the training. Thus, not all employees have equal access to EEO-related training.

ORM's initial attempts to provide training to VA employees in the new CRS had mixed results. Some employees did not receive training; of those that did, reactions to the training were mixed. Because of these concerns, ORM subsequently created and broadcast an in-depth video about the CRS, which provided thorough information to all VA employees.

While the quality of EEO-related training varies across VA's facilities, most employees know the difference between acceptable and unacceptable behavior, and how to access the CRS if they need it. Future training of VA employees could focus on areas identified by ORM through its root cause analyses, thus providing learning targeted to specific needs.

Booz:Allen recommends that, to the extent resources will permit, ORM expand its role in providing VA-wide training to all employees. ORM, through its complaint processing activities and root cause analyses, will have access to pertinent information related to the kinds of training needed to help change and improve VA's work environment. By combining this information with ORM's training expertise and technologies, and with the expertise of facilities' EEO staff, quality, targeted training packages can be developed and provided to VA's work force.

In summary, there is inconsistent quality in the EEO-related training provided to employees throughout VA. This inconsistency pertains to training on the new CRS as well as other types of EEO training, and can largely be attributed to the experience levels of the instructors, as well as the variations in depth of the training provided.

Question 5.

Our fifth question was *'to what extent is VA effective in administering the CRS?'*, a question that pertains to Congressional interest d.

The establishment and administration of ORM and OEDCA are consistent with an organization that is in development. The administrative mechanisms necessary to effectively manage the CRS have either been developed or are in the process of being developed. Both ORM and OEDCA have staffed their organizations and have implemented a formal organizational structure. Additionally, they have established and communicated roles and

responsibilities of staff positions. In terms of operations, both ORM and OEDCA have established standard operation procedures (SOPs) for use by staff. As of the time of this writing, ORM's SOPs are in draft form.

Because of its size and geographical dispersion, ORM has a greater need for effective administrative mechanisms. Figure 1 shows the status of various aspects of ORM's administration. As shown, some of ORM's administrative mechanisms are still under development, such as external relations and feedback systems, which is not uncommon for a new organization with such a heavy workload. Other mechanisms, such as performance measurement, standard operating procedures, and root cause analysis, are in the implementation phase. Still other mechanisms are fully operational at this time; establishment of the organization, staffing, and roles and responsibilities are three such examples.

Figure 1. Status of the Administration of the CRS

	Development	Implementation	Operation
Organization			
Staffing			
Performance Measures			
Roles & Responsibilities			
External Relations			
SOPs			
Root Cause Analysis			
Feedback			

The CRS' inheritance of a backlog of cases has impacted the degree to which it can be fully effective. ORM needs to minimize its existing backlog as quickly as possible. The backlog is having a negative impact on an otherwise successful complaint resolution system. ORM has already identified potential ways to address the problem. Reduction of the backlog should be given the highest priority. OEDCA has successfully reduced its backlog of complaints needing adjudication. However, ORM will need to communicate upcoming workload changes to OEDCA so OEDCA can be prepared to continue to meet the demand caused by additional increases in complaints needing adjudication.

In conclusion, we found that ORM and OEDCA have developed, or are in the process of developing, the administrative mechanisms necessary for successful operation of the CRS. Current concerns include a short-term staffing shortage in the Intake Specialist and Investigator positions.

Question 6.

Our sixth question asked 'to what extent are there programs and mechanisms in place to evaluate the effectiveness of the CRS (and how effective are these programs and mechanisms)?,' a question that pertains to Congressional interest e.

ORM is in the process of developing a performance management and measurement system that includes outcome measures focused on mission accomplishment; output measures that provide an indication of progress; and activity measures that indicate whether work processes are effective and efficient. EEOC regulations only require that output and activity measures be collected. Clearly, ORM has set standards beyond those external requirements, and is seeking to achieve the higher order outcomes of fairness, integrity, and trust; support for VA's

high performing workforce; early resolution of complaints; and fostering a workplace free from discrimination and harassment.

With the exception of reviews of workload data, the methods currently used by ORM Field Offices to gauge office performance are not standardized, and likely differ from site to site. Additionally, many staff are unsure of the performance expectations on them and of the implications of not meeting their performance standards. The primary reliance on informal, rather than standardized feedback mechanisms may prevent ORM Field Offices from accurately monitoring operational progress.

Booz-Allen recommends that ORM solidify its mechanisms for measuring its performance. For example, ORM should finalize the required content and format of the *Root Cause Report* to make it an even more effective feedback tool. ORM should also establish a formalized mechanism for using performance data to improve programmatic performance.

We further recommend that the techniques used by Regional Officers to assess Field Office performance be reviewed in the interest of standardizing the more innovative ideas for use across ORM. This could be accomplished through discussions of the various methods of performance assessment that Regions are currently using, compiling a comprehensive list, and determining an efficiency rating (time invested/results obtained) for each method. Using this approach, ORM could identify the most promising techniques for broad use across ORM.

In conclusion, ORM has a vision for monitoring its programmatic performance against standards beyond those required by external regulations, and is in the process of establishing performance measurement and feedback mechanisms.

Question 7.

Our seventh question was *'to what extent is VA's CRS effectively collaborating with related programs, procedures, and activities?'*, a question that pertains to Congressional interest f.

The majority of Affirmative Action and Diversity Program staff and Union representatives report that they do not coordinate or communicate with ORM. This lack of coordination and communication could result in a lost opportunity to jointly foster a workplace free of discrimination and harassment. The lack of coordination with related programs could also inhibit effective complaint processing and resolution at the lowest levels.

Many facility staff (On-site EEO Program Managers, Human Resources staff) perceive that they are dissociated from the new CRS, and that ORM staff make unrealistic demands on them. These strained relations could have a negative impact on the success of ORM. For example, since ORM is highly dependent upon facility staff for obtaining data and logistical support, lack of cooperation from on-site staff could directly reduce ORM's effectiveness at obtaining information and facilitating complaint resolution.

We recommend that ORM continue to clarify and strengthen its relationship with on-site facility staff, management, and related programs in order to improve complaint processing and enhance the EEO environment at VA. For example, ORM's analysis of redacted complaint data would allow ORM and VA management to identify trends and root causes in complaints, thereby effecting systemic improvements. ORM should also establish formal communication procedures to be used with all facilities, using lessons learned from facilities where a strong relationship currently exists. These communication procedures must ensure that ORM's key objectives of confidentiality and independence are still met.

To help clarify its relationship with related programs and involve them in the CRS, ORM should establish regular communications that permit a sharing of trends and issues. These could be accomplished through venues such as forums, regularly scheduled conference calls, and meetings. This information sharing will enable ORM to work effectively with Affirmative Action and Diversity Programs to better understand VA's EEO climate and identify ways to foster a workplace free of discrimination and harassment.

ORM has worked with the Unions at a national level; however, this cooperation has not always carried down to the local facility level. ORM should continue to cultivate a better

relationship with the Unions, particularly the local chapters, clarifying the Union's role in the new system.

Overall, we found that ORM does not routinely collaborate with staff in EEO-related programs at VA facilities. Additionally, the relationship between ORM and facility EEO staff is sometimes strained.

Question 8.

Our eighth question asked *"to what extent is VA effective in issuing and enforcing disciplinary measures, and using these measures as deterrents for other employees?"*, a question that pertains to Congressional interest g.

The current structure places the responsibility for administering disciplinary and adverse actions in response to EEO offenses on facility management. OEDCA is able to propose that discipline be considered; however, facility management makes the final decision.

The effectiveness of discipline as a deterrent at VA is limited by employees' lack of awareness of discipline that has been taken in response to EEO offenses. Additionally, many employees perceive that discipline at VA is not applied appropriately or consistently, further reducing its effectiveness as a deterrent.

In response to problems with the administration of discipline at VA, a significant change has recently been enacted, imposing tighter controls on the process. VA's Assistant Secretary for Human Resources and Administration (HR&A) is now responsible for tracking and monitoring disciplinary actions taken by facility management. Facility managers are required to report to the Assistant Secretary for HR&A the disciplinary actions taken (or not taken), and their rationale, in response to findings of intentional discrimination or harassment.²

We recommend that ORM and OEDCA continue to explore ways of tracking and communicating disciplinary measures taken in response to EEO offenses. We recognize that this recommendation presents several challenges. However, we believe disseminating information could be an effective deterrent. Additionally, communicating this information may help overcome non-supervisory and supervisory employees' beliefs that discipline is not fairly applied, as was indicated in our findings.

In conclusion, we found that while VA has made strides in ensuring that discipline is applied appropriately, the effectiveness of VA disciplinary measures as deterrents is still limited. Limitations are imposed by lack of accurate information and disbelief that discipline is fairly administered.

Question 9.

Our ninth question was *"how has the new CRS impacted the EEO workload?"*

ORM's complaint statistics reflect large increases in the number of incoming telephone calls from complainants, as well as in the number of informal complaints filed. Moreover, the number of formal complaints pending in the backlog has increased significantly in the past several months. These increases are likely attributed to more favorable perceptions by employees overall of the new CRS, as well as a significant number of previously unreported complaints that ORM recently discovered. To ensure ORM is meeting its timeliness and quality objectives, appropriate mechanisms must be put into place to handle fluctuations in informal complaints. ORM must increase efforts toward resolving informal complaints before they become formal, thereby preventing extra burden on the CRS and the potential for additions to the formal complaint backlog.

It should be noted that ORM has been proactive in tracking complaint activity and conducting trend analyses to obtain greater insight regarding complaints and the effectiveness of the CRS. One of the most unique aspects of ORM's tracking and trend analyses is its efforts to

² Memorandum dated 3/11/89 from the Deputy Assistant Secretary for Human Resources Management to the Executive Secretary (Subj: Follow-up Procedures in Findings of Retaliation and Intentional Discrimination).

identify root causes underlying non-discriminatory complaint activity to increase ORM's ability to affect the workplace environment.

We recommend that ORM continue to monitor trends in complaint activity and root causes to facilitate timely and effective action planning. Towards this end, ORM should continue to conduct both centralized and Field Office specific analyses of complaint activity trends. ORM should also expedite the process for standardizing an approach to root cause identification. These steps will aid ORM in recognizing patterns and employing interventions.

We further recommend that ORM devote additional resources (e.g., funding and/or staff) to ensure that the Client Server–Correspondence Information Management System (CS-CIMS) database serves as a resource to assist ORM staff. Short-term investments in information technology and information management tools will have long-term positive impacts on increased efficiency and effectiveness.

ORM has demonstrated its effectiveness to date in meeting or nearly meeting its goals for informal resolution, despite increases in the number of informal complaints it receives. ORM should strive to continue to achieve these goals, thus ensuring CRS effectiveness regardless of fluctuations in informal complaint activity.

In summary, we concluded that an increase in complaints, as well as the backlog from VA's former EEO complaint resolution system, has resulted in an excessive workload on ORM's Intake Specialists and Investigators. OEDCA has effectively reduced the backlog of complaints needing adjudication from the former system.

Question 10.

Our tenth, and final, question asked *'do customers perceive that the CRS is meeting their needs?'*

Many of the changes made to the CRS have had a positive impact on the processing of complaints. Most VA employees and ORM staff have noticed the changes and believe that they have addressed many of the concerns VA had with the old system. Most of the employees who were surveyed, interviewed, or who had participated in focus groups indicated they had had no direct experience with the new CRS, and thus were unable to determine whether it would meet their needs. While some concerns were expressed regarding the ability of ORM staff to be neutral, to keep focused on quality and not quantity, and on a need for improved customer service skills, the majority of VA employees are optimistic that the new CRS will improve the complaint resolution process.

That optimism is not found with many of the supervisory employees, who expressed their concerns that ORM would be biased in favor of the complainant. Negative reactions by supervisors should be considered a matter to be addressed by ORM; efforts need to be made in these early stages of ORM's development to reassure the supervisors that ORM's fairness and objectivity extend to all parties in a complaint process.

In conclusion, we found that many employees perceive that it is too soon to tell if the new CRS will meet their needs. However, the responses from our focus groups indicate that non-supervisory employees are optimistic that the new system will be an improvement over the old system. Supervisory employees expressed less positive reactions, feeling that the new system will be biased in favor of complainants.

Conclusion

This concludes our testimony on our assessment of the VA's CRS relative to the objectives set forth in Public Law 105-114 and to other pertinent areas offering insight into the effectiveness of the new CRS. In closing, based on our overall assessment, we found that VA's CRS has made notable strides in certain areas, such as working towards achieving its mission, providing initial training for ORM staff, and establishing administrative procedures to guide the program. While our assessment also identified other areas needing improvement, we found that ORM is already actively seeking solutions to improve in these areas. Given that the CRS, ORM, and OEDCA are in their infancy, it is our opinion that suitable progress has been made toward developing an effective process and governing organization.

For further information, please contact Thomas L. Shaffer, Vice President, Booz Allen & Hamilton, Inc. at 703-902-5414, 8251 Greensboro Drive, McLean, VA 22102 or Kathleen Dyer, Principal, Booz Allen & Hamilton, Inc. at 703-917-2914, 8251 Greensboro Drive, McLean, VA 22102.

**STATEMENT OF
CARLTON M. HADDEN, ACTING DIRECTOR
OFFICE OF FEDERAL OPERATIONS
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

SEPTEMBER 30, 1999

Good morning Mr. Chairman and Members of the Committee. Thank you for the opportunity to appear before you today. I am Carlton M. Hadden, Acting Director of the Office of Federal Operations U.S. Equal Employment Opportunity Commission.

EEOC has oversight of Federal agencies equal employment opportunity (EEO) complaint processes in the Federal sector. EEOC also oversees Federal agencies' programs of affirmative employment through a review process which includes agencies filing annual reports and EEOC reviewing those reports, as well as the conduct of technical assistance or on-site visits when needed. The office that exercises the oversight function is the Office of Federal Operations (OFO). OFO also provides guidance and assistance to the EEO Administrative Judges who conduct hearings on discrimination complaints filed against agencies. Additionally, OFO adjudicates appeals of Federal agency decisions on discrimination complaints and ensures agency compliance with decisions issued on those appeals.

Federal agencies process complaints of discrimination in accordance with the EEOC's complaint processing regulations at 29 C.F.R. Part 1614. The Commission also provides detailed guidance on the implementation of the 1614 regulations through EEO Management Directive 110. All Federal agencies must investigate the EEO complaints filed against them and issue decisions on the merits or take other action to resolve or dismiss the complaint. After the investigation, a complainant may request a hearing before an EEOC administrative judge. Decisions by agencies can be appealed to EEOC.

EEOC has made significant changes to the 1614 regulations which will take effect on November 9, 1999. We expect these changes will result in a more efficient and fair complaints process at all Federal agencies. The revised regulations will have a positive impact on the entire federal sector process, both at the agency level and at the Commission's hearings and appeals stages.

There are several major changes to the regulations which will impact all Federal agencies including the VA. One of the critical changes is the requirement that agencies institute Alternative Dispute Resolution, or ADR, programs which will be available to resolve disputes throughout the complaint process. This remedy parallels the ones available in the private sector, such as the Commission's recently launched national mediation program. Through this, we have learned that mediation is a fair and efficient voluntary mechanism that resolves discrimination claims to the satisfaction of both parties. It prevents undue delays and brings matters to closure quickly and fairly. I am confident that ADR in the federal process will have similar beneficial results.

Another important 1614 regulation change involves curtailing agencies' authority to issue final decisions where there has been a hearing before an administrative judge. Now, agencies must issue orders stating whether they will fully implement the judge's decision. If they do not, they must also appeal the decision to the Commission. In addition to these changes, new provisions reduce case fragmentation and eliminate multiple appeals in single cases; the class action process is revamped, making it more feasible for class claims to be resolved in the administrative process; and finally, the second level of appellate review is streamlined. All of

these changes improve the complaint process by eliminating unnecessary layers of review and addressing systemic unfairness.

These regulatory reforms are vital, but more must be done. One key EEOC initiative has been to implement a comprehensive, integrated strategy which links the hearings and appeals programs with strong oversight, technical assistance, and educational initiatives. Increased resources help further this approach which, in turn, promotes the prevention of EEO disputes.

There are additional efforts underway to attempt to improve the Federal sector EEO process. Chairwoman Castro cosponsors a task force with the National Partnership for Reinventing Government representing stakeholders in the federal sector process. This NPR/EEOC Interagency Federal EEO Task Force is comprised of a broad group of federal agency officials who will develop innovations increasing the fairness, efficiency, and the effectiveness of the federal sector complaint process as the new regulations are implemented. In addition, the task force is discussing ways to improve federal sector data, identify best practices, test pilot programs in a variety of areas including ADR, workplace dispute prevention, and computerized methods for tracking and monitoring cases. VA is actively participating in the Task Force and has nominated two full time employees to support the Dispute Prevention and the Early Dispute Resolution teams. VA has also indicated interest in partnering with the EEOC in developing a cost per complaint model that Federal agencies may use in 1) EEO forecasting, 2) budget planning and execution 3) prevention methodologies and 4) performance based measures consistent with GPRA.

Since the last VA oversight hearing which EEOC attended in 1997, the VA has completely restructured its EEO complaint process. EEOC supports the steps that VA has taken to restructure its complaints processing operation. VA's present structure has a Deputy Assistant Secretary for Resolution Management reporting to the Assistant Secretary for Human Resources and Administration. Under VA's previous system, concerns were raised regarding the role of VA field facility directors as EEO officers and the role of their staff as managers of the EEO counseling process. The present structure eliminates those concerns by transferring the EEO Officer responsibilities from the field facility directors to the new Office of Resolution Management. VA also incorporates ADR in its revised complaints processing program at any stage of the complaint resolution process. VA has also established customer service standards and created a toll-free number for all employees to reach its counseling staff.

In 1998 VA had a workforce of 240,398, the third largest after Department of Defense and the Postal Service. VA had approximately 8.7% of total Federal workers. EEOC's most recent complaints data reflect that in 1998 VA counseled 7,877 employees or 3.3% of its workforce, compared to a government-wide average of 2.4%. VA reported that it counseled 100% of its requests within the required thirty days, compared a government-wide average of 59%. We agree with the Booz-Allen report that it is too soon to assess the impact of the structural revisions on VAs EEO process. However, we expect to be able to assess the changes within six to eight months and can report our findings to you then.

In 1998 VA employees filed 1,307 filed complaints (16.5% of those counseled), a significant reduction in complaint filing from the two previous years and well below the government-wide average of 45%. We understand that VA has reduced the average number of days to close a complaint from 440 in 1997 to 419 in 1998, but that it remains behind the government-wide average of 384 days. We encourage VA to continue its efforts to improve in this area.

VA also reports to EEOC regarding its affirmative employment program. Some highlights from its most recent accomplishment report follow.

- The average grade of whites at VA was 8.9 in FY 1998. Government-wide it was approximately 10.3.

- The average grade for blacks at VA was 6.5 in FY 1998. Government-wide it was approximately 8.5. Blacks increased in the GS 13-15 grade grouping during FY 1998 from 5.3% to 5.6%. In the SES positions the percentage increased from 6.8% to 7.1% while the number (19) of black SESers remained the same as in FY 1997.
- The average grade for Hispanics was 7.8 in FY 1998. Government-wide it was approximately 9.1. In the GS 13-15 grade grouping, Hispanics representation remained the same as in FY 1997 at 4.3. In the SES ranks, Hispanics increased from 1.1% (3) to 1.9% (5).
- The average grade for Asian American/Pacific Islanders was 10.4 in FY 1998. Government-wide it was approximately 10. In the GS 13-15 grade grouping, Asian representation increased from 10.2% to 10.4 percent during FY 1998. In the SES positions, Asian representation increased from 1.4% (4) to 1.9% (5).
- The average grade for American Indian/Alaskan Natives was 7.3 in FY 1998. Government-wide it was approximately 8.4. In the GS 13-15 grade grouping, American Indians remained the same at 4% during FY 1998. In SES positions, they remained the same at 1.1% (3).
- The average grade for women was 7.4 during FY 1998. Government-wide it is approximately 8.7. Women increased their representation from 25.3% to 26.3% in the GS 13-15 grade grouping during FY 1998. In SES positions they increased their representation from 11.8% (33) to 13.1% (35).
- Sexual harassment- VA's FY 1999 update for its, "Plan for the Prevention of Sexual Harassment" notes that it is updating VA's internal policy manual for procedures for filing formal complaints on the basis of sexual harassment.
- Training on the prevention of sexual harassment will be conducted at new employee orientations during FY 1999 - each new employee will receive four hours of training
- An EEO review program for all VA facilities has been initiated by the EEO office to address facility efforts to prevent sexual harassment.
- VA has a toll-free information line regarding sexual harassment complaints.

I have attached some statistics on the employment of minorities and women at VA to my testimony. In sum, we are pleased at the progress that VA has made so far in its restructuring of its EEO program and look forward to further changes to improve that program.

Again thank you for inviting me to appear before you today. I will be happy to answer any questions that you may have.

ATTACHMENT

DEPARTMENT OF VETERANS AFFAIRS

TOTAL WORKFORCE PROFILE (FY 1998)

EEO GROUP	VA	CLF ¹
Blacks	23.9%	10.4%
Hispanics	5.9%	8.1%
Asian Americans	4.9%	2.8%
American Indians	0.8%	0.6%
Women	56.8%	45.7%

¹*Civilian Labor Force*

DEPARTMENT OF VETERANS AFFAIRS

MAJOR OCCUPATIONS (FY 1998)

PHYSICIAN SERIES: 602
TOTAL WORKFORCE: 11,183

EEO GROUP	VA	CENSUS OCCUPATION
Blacks	3.2%	3.6%
Hispanics	5.6%	4.9%
Asian Americans	17.8%	10.8%
American Indians	0.2%	0.1%
Women	22.9%	20.7%

NURSE SERIES: 605, 610
TOTAL WORKFORCE: 33,174

EEO GROUP	VA	CENSUS OCCUPATION
Blacks	14.5%	8.8%
Hispanics	5.5%	2.9%
Asian Americans	9.2%	4.4%
American Indians	0.5%	0.4%
Women	87.5%	94.3%

DEPARTMENT OF VETERANS AFFAIRS

MAJOR OCCUPATIONS (FY 1998) – cont'd.

DIETITIAN SERIES: 630

TOTAL WORKFORCE: 1,268

EEO GROUP	VA	CENSUS OCCUPATION
Blacks	11.3%	19.1%
Hispanics	3.9%	4.8%
Asian Americans	6.2%	4.3%
American Indians	0.6%	0.6%
Women	93.9%	89.3%

SOCIAL WORKER SERIES: 185

TOTAL WORKFORCE: 3,702

EEO GROUP	VA	CENSUS OCCUPATION
Blacks	16.6%	20.2%
Hispanics	5.0%	6.8%
Asian Americans	1.4%	1.7%
American Indians	0.7%	1.1%
Women	54.9%	68.9%

DEPARTMENT OF VETERANS AFFAIRS

TECHNICAL AND ADMINISTRATIVE WORKFORCE

TECHNICAL WORKFORCE

(29.3% of the VA's white collar workforce are in the technical category)

EEO GROUP	FY 1998 %	CLF %
Blacks	33.0%	10.2%
Hispanics	6.2%	6.6%
Asian Americans	3.0%	3.5%
American Indians	1.0%	0.7%
Women	65.6%	54.9%

ADMINISTRATIVE WORKFORCE

(12.5% of the VA's white collar workforce are in the Administrative category)

EEO GROUP	FY 1998 %	CLF %
Blacks	16.6%	8.9%
Hispanics	4.7%	5.2%
Asian Americans	2.2%	2.8%
American Indians	0.8%	0.5%
Women	47.8%	50%

NOTEWORTHY AREAS OF CONCERN

In the Physician series, Asian American/Pacific Islanders are 7% above the Census Occupational data. (17.8% v. 10.8%)

- In the Dietitian series, blacks are 7.8 percentage points below the Census Occupational data. (11.3% v. 19.1%)
- In the Social Worker Series, women are 14 percentage points below the Census Occupational data. (54.9% v. 68.9%)
- The Roanoke Regional Office reported that it hired had 50 permanent hires in FY 1998, of which 33 (66%) were minorities and/or women. Vacancies were announced at the lowest grade level with promotion to the journeyman level.
- At the Kansas City Medical Center 14 of 21 employees enrolled in the Pharmacy Technician Training program received their certificates. However, only one black male was selected for a Pharmacy Technician position.

STATEMENT OF
THE HONORABLE
EUGENE A. BRICKHOUSE
ASSISTANT SECRETARY FOR HUMAN RESOURCES AND
ADMINISTRATION
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
U. S. HOUSE OF REPRESENTATIVES
SEPTEMBER 30, 1999

Mr. Chairman and members of the Committee, I appear before you today on behalf of the Secretary of Veterans Affairs to testify about the Department of Veterans Affairs' (VA) compliance with Public Law 105-114, the Veterans Benefits Act of 1997, which established the Office of Resolution Management (ORM) and the Office of Employment Discrimination Complaint Adjudication (OEDCA).

On November 21, 1997, when Congress enacted the Public Law, VA had already aggressively developed and begun to radically restructure the Equal Employment Opportunity (EEO) discrimination complaint program under the Department's "Plan for Transformation." This plan, which was consistent with the Public Law, called for separation of the EEO discrimination complaint program from field and Headquarters' facilities, removal of the designation of EEO Officer from facility directors and certain headquarters executives, and creation of two independent structures, ORM and OEDCA, to process complaints of employment discrimination. I am pleased to report that ORM and OEDCA are fully operational and in full compliance with the Public Law.

Communicating Public Law 105-114

To inform VA employees about the change, we used every communication tool available to announce the new complaint resolution process. For example, we distributed a tri-fold pamphlet to employees, noted the change on employee

paystubs, announced ORM by memorandum, published articles in VA's national magazine, "Vanguard," and created a website, which I am pleased to report that employees have accessed nearly 13,000 times since January 1999. We developed a training video, scheduled satellite broadcasts, provided information to VA's national business video, "The VA Report," conducted facility training, and published a standard operating procedures manual.

Prevention of discrimination within the Department is a matter of extreme importance to Secretary West and other VA managers. Prevention, of course, requires more than simply a change in how we process complaints. It requires innovative outreach activities. For example, ORM and OEDCA publish digests that summarize the reasons for final decisions in selected cases, and that analyze root causes to inform VA managers about what is at the heart of these workplace disputes. These digests serve to educate employees and managers on discrimination in the workplace, the conduct that leads to a perception of discrimination, and the appropriate venues to resolve workplace disputes that fall outside of the discrimination complaint process.

Specialized Communications on Sexual Harassment Prevention

Throughout implementation, the Secretary of Veterans Affairs was keenly mindful of concerns with sexual harassment. In the past, VA communicated a "zero tolerance" policy to all employees. On September 22, 1999, the Secretary communicated his prevention of harassment and discrimination policy to employees by memorandum. He embraces a ***three-part fundamental principle***. The first is prevention. We are accomplishing this through continuous and timely training programs. For example, we completed the retraining of all VA employees on sexual harassment. We developed an EEO Deskbook for employees and supervisors on employment discrimination and aired satellite broadcasts on discrimination. The Deskbook and the broadcasts explain the procedures available to employees. Further, through our Employee Education System, we developed a videotape titled "The VA's New Discrimination Complaint Process & The Law of EEO." This videotape was

distributed to all VA facilities as one of several tools to uniformly train employees and managers. We developed and published a booklet for VA employees on the discrimination complaint procedures and prevention of harassment. The Veterans Health Administration staff worked diligently to develop a computer-based training module for its employees. The module explains sexual harassment, administers a test to participants, and certifies successful completion of training. The Veterans Benefits Administration (VBA) trained its employees via satellite broadcast. Office of Resolution Management and Office of General Counsel officials assisted VBA in providing sexual harassment training. In addition, ORM assisted the National Cemetery Administration in training its employees.

Rapid Response Teams

The second principle the Secretary has embraced regarding sexual harassment and discrimination is **immediate and aggressive executive action** through deployment of rapid response teams that have independent and mandated authority to investigate, to the fullest, charges against senior managers. Team members are unbiased, impartial, and not influenced by any VA official in conducting investigations. When an allegation involves the direct, personal conduct of a facility director, assistant/associate director or chief of staff, the allegation is immediately brought to my attention for a determination of whether a rapid response team should be deployed. If deployed, the team is generally comprised of a member of the Office of General Counsel, the Office of Human Resources Management, the Office of Resolution Management, and other agency officials as appropriate.

When an allegation does not involve senior managers, ORM EEO counselors automatically elevate sexual harassment allegations to the ORM Regional EEO Officer to determine if any additional intervention is necessary by facility or network/area officials. ORM maintains a close vigilance of the allegation and the resulting action. ORM also works closely with the Office of Inspector General on inquiries that office receives concerning sexual harassment or other forms of alleged discriminatory misconduct.

Executive Accountability

Third, the Secretary has communicated executive accountability. Failure of executives to manage ethically will result, and has resulted, in appropriate disciplinary and adverse action.

We place a strong emphasis on the performance requirements of executives. Within VA, before an executive can be considered for a pay adjustment, bonus or award, the appropriate Under Secretary or Assistant Secretary must certify in writing the specific accomplishments of the executive in fostering an environment that is free of discrimination. Failure to certify such accomplishments results in the executive not being considered for the adjustment, bonus or award.

We developed an in-depth, on-site review guide that explains how we conduct EEO climate surveys, what procedures we will use and what must be in place to satisfy "compliance." We communicate the survey results to the highest level officials within the Department. The Office of Equal Opportunity ensures follow-up on any recommendations contained in the report. Failure to implement the recommendations results in a non-compliance report and additional intervention is then taken by VA's most senior officials.

The Department engaged in executive-level meetings with network and facility directors to develop and implement strategies to ensure that positive actions are taken to improve the working environment and reduce perceptions of discrimination. These meetings resulted from data contained in the root cause quarterly report that ORM generates. On a higher level, facility and network/area directors are including EEO officials in strategic planning sessions, and are actively working with the officials in the Office of Equal Opportunity and ORM in identifying trends, solutions, and training initiatives. In some cases, we collaboratively provide teams to facilities to conduct climate assessments and employee focus groups.

Alternative Dispute Resolution

The Department is continuing its efforts to increase Alternative Dispute Resolution (ADR) use, particularly in workplace disputes arena. ADR is seen as

a way to resolve workplace issues in a more timely, less costly, and less adversarial manner than litigation or administrative adjudication, and a Department-wide directive in support of ADR will soon be issued. As you are aware, ORM has several ongoing ADR initiatives of its own, and over the past several months, ORM has been working collaboratively with VA organizations, its administrations, local facilities, and labor to more fully develop ORM's Mediation Program. This Program is expected to be a critical element in ORM's dispute resolution system, and relies on local facility involvement in the mediation process.

Earlier this year, ORM piloted two mediation programs in our Bay Pines and Hines field offices. In these pilots, participants from the local medical centers, regional office, regional counsel, labor unions, and other VA organizations, worked together with representatives from ORM field offices and headquarters, to fashion mediation programs for their geographic servicing area that are tailored to meet their needs, enhance communication between the various players, and maximize the ADR resources. Several ORM employees received Mediator Skills Training during the pilots. The success of these pilots resulted in deployment of the piloted program model, and the lessons learned, to the remaining ORM sites. We anticipate complete implementation in July 2000. ORM's resolution of informal complaints is 67 percent.

On another front, VHA recently created an ADR Steering Committee to develop an action plan for establishing an effective and comprehensive approach to ADR that will ensure all medical centers have operating mediation programs in their facilities by September 30, 2000. VBA is working on a similar initiative. ORM is participating in the VHA Steering Committee and several other similar committees to help ensure that a quality VA ADR program is implemented that operates successfully across organizational lines. ORM is also working on several other initiatives, including a project in collaboration with VA's Learning University and the Department's Dispute Resolution Specialist to develop an "Introduction to Mediation" videotape. This videotape will provide VA employees a basic introduction to mediation, how it works and its benefits. Several local

facilities have indicated a need for a videotape of this type to educate employees about the benefits of mediation in helping resolve workplace disputes. Through these initiatives, and other collaborative efforts, we will strive to reach an overall 75 percent goal by the end of Fiscal Year 2000.

We enjoy an outstanding working relationship with the Equal Employment Opportunity Commission (EEOC) on streamlining the EEO discrimination complaint process. In August, we detailed two employees to the EEOC and National Partnership for Reinventing Government's taskforce to participate in identifying prevention strategies and developing additional dispute resolution mechanisms. The Deputy Assistant Secretary for Resolution Management is serving as a member of the Senior Leadership Council responsible for providing oversight of the taskforce. EEOC routinely includes the Deputy Assistant Secretary for Resolution Management in discussions, planning sessions, and working groups dedicated to improving the discrimination complaint process.

Booz-Allen & Hamilton Findings

Mr. Chairman, I would like to take this opportunity to respond to the findings made by Booz-Allen & Hamilton, the contractor who completed the assessment of the Department's complaint resolution system. We studied the findings very carefully and find that the contractor did an outstanding job in assessing our environment in 1998 and in providing a follow-up report on April 30, 1999. We are particularly pleased that Booz-Allen & Hamilton noted that VA's complaint resolution system is superior to best practice organizations in government and the private sector. With the creation of ORM and OEDCA, employees view the resolution system as independent, fair, and they trust the new process. In less than one year's time, we have fully implemented every provision of the Public Law. The Secretary gave the establishment of ORM and OEDCA the highest priority. He ensured that both organizations had the necessary resources they needed to become fully operational. I would like to especially note that during the week of September 13, 1999, the EEOC Regional

Office in New York conducted a full program assessment of the ORM Field Office in Lyons, New Jersey, one of the larger ORM Field Offices. Their report will advise EEOC headquarters that their interviews with employees at different VA facilities in Pennsylvania, New York, and New Jersey revealed that employees have confidence in ORM and OEDCA, believe they are impartial and that they process complaints fairly. Yet, their report will go further to state that the independent operation of ORM and the nationwide organizational structure is a model that the government should consider implementing throughout the Federal sector.

Booz-Allen & Hamilton noted that ORM improved processing timeliness and has mechanisms in place to address the backlog in complaints. ORM increased its staffing levels for investigators and intake specialists, developed generalist positions and optimized its investigative procedures to include desk, on-site, fact-finding and videoconferencing investigations. ORM eliminated nearly 150 days in processing complaints. We plan to be in full compliance of the EEOC mandate of 180 days by Spring of 2000. These are monumental accomplishments for the Department and the Committee.

Since the April 30 report from Booz-Allen & Hamilton, we implemented a number of other initiatives to further ensure that we meet timeliness, training, and communications recommendations. We monitor informal and formal complaint activity by facility, network, and by race, sex, national origin, disability, age, and reprisal.

OEDCA Accomplishments

OEDCA has effectively addressed all of the Public Law requirements relating to adjudication; and is effectively managing the final agency decision process in the Department.

OEDCA is operating as the neutral and independent decision-maker envisioned by the Public Law. In fact, OEDCA's independence was recognized in Booz-Allen & Hamilton's, April 30, 1999, report. By way of example, the report pointed to OEDCA's acceptance rate of recommended findings of discrimination

by EEOC administrative judges as evidence of its effectiveness in remaining neutral and independent from VA management. Since commencing operation, OEDCA has accepted, in whole or in part, approximately 64 percent of EEOC recommendations, as compared with the Department's historic acceptance rate of 20 percent. The government-wide acceptance rate, according to the General Accounting Office, is 36 percent.

OEDCA's acceptance rate, however, is not the only evidence of its independence. The Booz-Allen & Hamilton report found through its focus groups that VA's employees now perceive OEDCA and ORM as independent entities. Such perceptions are just as important as the reality in gaining employee confidence in the VA's new complaint resolution system.

A frequent criticism of the former EEO complaint adjudication process was the huge backlog of cases awaiting final decision, and consequently, the lengthy delays complainants had to endure before receiving their decision. I am pleased to report that OEDCA has significantly reduced that backlog since it assumed that authority from the Office of General Counsel (OGC) in February 1998. At that time, there were 446 cases awaiting adjudication. Many of those cases had been pending in OGC for more than a year. Since commencing operation, OEDCA has achieved a remarkable 80.5 percent reduction in the backlog. As of September 1st, its inventory is down to a manageable workload of 87 cases.

In addition to OEDCA's success in reducing the backlog, it has also been able to reduce substantially the Department's processing time during the adjudication phase of the complaint process. When OEDCA began operations, the Department's average processing time during that phase was approximately nine months. Since then, that figure has decreased to 39 days. I am pleased to report that the Department's average processing time during the adjudication phase is now within the time frames specified in the EEOC governing regulations.

As required by Public Law 105-114 and procedures approved by the Secretary, OEDCA plays a pivotal role in ensuring appropriate follow-up action

once there has been an administrative or judicial finding of retaliation or intentional discrimination. OEDCA and other appropriate elements within the Department have established and implemented a procedure to ensure that facilities in which discrimination or retaliation occurs take or propose appropriate action involving the individual or individuals responsible for the unlawful conduct. It is OEDCA's responsibility to initiate this procedure by reporting such cases to the Secretary, who in turn instructs the appropriate official in Central Office to ensure that proper follow-up action is taken, including discipline in appropriate cases.

In addition to issuing decisions, OEDCA is also engaged in outreach efforts to ensure that lessons learned from its decisions are made available throughout the Department, and not just to the parties involved in a particular complaint. It does this by publishing a quarterly digest. The *OEDCA Digest* summarizes selected decisions in a variety of cases in which discrimination is and is not found. It also provides information concerning new regulations and guidance from the EEOC, new case law, and other items likely to be of interest to employees, VA managers, and the Department's EEO professionals. OEDCA believes that its digest, through the sharing of information and lessons learned, will help reduce the number of complaints filed in the future.

Summary

We have learned from our past experience. We are doing more. We are incorporating prevention strategies, alternative dispute resolution, and other initiatives to reduce discrimination complaints. ORM crafted an integrated strategic plan in conformance with the Government Performance and Results Act. The plan articulates mission critical performance targets such as quality, timeliness, customer service, and program evaluation. ORM will be critically evaluated to be sure that they are providing the services needed by our employees. Already, ORM is working with EEOC and other organizations on development of a program evaluation model that they will use to evaluate their efficiency and effectiveness. An important aspect of program evaluation will

include measuring the costs to process complaints. In this regard, ORM is working on its activity based costing model. Once development of this model is complete, VA managers and employees will have a full appreciation of how much it costs to process complaints of employment discrimination.

We incorporated ORM's performance goals into the Department's strategic plan. We are devoting resources, solely dedicated to preventing discrimination complaints. We conduct complaint trend analyses, identify potential problem areas, discuss and implement preventive strategies, and follow-up on recommendations to determine effectiveness. Of critical importance, the Veterans Health Administration and VA Headquarters are passing down the costs to operate ORM and OEDCA to local facilities. This practice provides financial incentive to facility directors to resolve workplace disputes that end up in the EEO discrimination complaints process. To continue our efforts to have the best program in government, we are inviting Booz-Allen & Hamilton to conduct a follow-up evaluation in June 2000 on ORM's service delivery and customer feedback initiatives.

Finally, Mr. Chairman, we believe these collective efforts will ensure that the Department of Veterans Affairs is a leader in the Federal community in providing a working environment that is free of employment discrimination, an environment where our employees can provide full service to veterans without fear of being harassed or reprisal against.

My colleagues and I will be happy to answer any questions you may have.

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSES

**Pre-Hearing Questions
Concerning the September 30, 1999, Hearing**

for
The Department of Veterans Affairs

from
**The Honorable Terry Everett
Chairman, Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
U.S. House of Representatives**

- 1. How many discrimination complaints have entered settlement negotiations or have been settled since May 1, 1999, to date?**

Between May 1, 1999, and August 30, 1999, 173 formal complaints of discrimination have been settled. Once the Office of Resolution Management (ORM) fully implements its Alternative Dispute Resolution (ADR) program, ORM will track settlement negotiations as well as the number of cases settled.

- 2. How many discrimination complaints entered settlement negotiations or were settled between January 1 and April 30, 1999?**

Between January 1, 1999, and April 30, 1999, 179 formal complaints of discrimination have been settled.

- 3. How many discrimination complaints were filed at VA Central Office between December 31, 1993 through December 31, 1997?**

Between December 31, 1993, and December 31, 1997, VA Central Office (VACO) employees filed 241 formal complaints of employment discrimination.

- 4. How many discrimination complaints have been filed at VA Central Office since the establishment of the Office of Resolution Management?**

Since ORM's Washington Field Office opened in April 1998, 66 complaints have been filed.

- 5. How old is the oldest complaint that has not yet reached final resolution?**

The oldest complaint was filed on November 27, 1992. This is a VACO complaint. This case was originally closed on March 26, 1993, by a written settlement agreement. However, the complainant alleged a breach of settlement. VA found no breach, and the complainant appealed the decision to EEOC. EEOC reversed VA's decision and remanded it for processing in March 1999.

- 6. How many complaints that have not yet reached final resolution are older than 5 years?**

Of 3,977 open pending complaints, 113 complaints are more than 5 years old.

- 7. How many complaints that have not yet reached final resolution are older than 3 years?**

Of 3,977 open pending complaints, 460 are more than 3 years old.



DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON DC 20420

October 22, 1999

The Honorable Terry Everett
Chairman
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are the Department's responses to post-hearing questions you submitted in your letter of October 1, 1999, concerning the September 30, 1999, hearing on the Department's Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication.

The enclosed information is provided to you in your capacity as Chairman of the Subcommittee on Oversight and Investigations of the House Committee on Veterans' Affairs. The enclosures contain information which is covered by the Privacy Act, 5 U.S.C., § 552a. Please note that in response to question 2, two replies have been prepared - one that contains protected information and one that has been redacted that can be inserted into the official record.

If we can be of further assistance, please have your staff contact me or Deborah Bittinger at 202-273-5828.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip Riggan".

Philip Riggan
Deputy Assistant Secretary
for Congressional Operations

Enclosures
PR/rh

**Post-Hearing Questions
Concerning the September 30, 1999, Hearing**

**for
The Department of Veterans Affairs**

**from
The Honorable Terry Everett
Chairman, Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
U.S. House of Representatives**

1. Please provide examples where managers, supervisors and/or senior executives have been held accountable and disciplined for sustained allegations of discrimination.

The enclosed list, developed in response to question 2, provides information regarding supervisors that have been disciplined in connection with cases involving retaliation. This list represents findings by the Office of Employment Complaint Adjudication (OEDCA) and the Equal Employment Opportunity Commission (EEOC). The examples below represent cases where officials have been disciplined based on the findings of Administrative Boards of Investigation, rather than on findings by OEDCA or EEOC.

Example 1. An investigation was conducted based on allegations that a former Medical Center Director had sexually harassed employees and retaliated against the Associate Director when he conducted an initial inquiry regarding those allegations. The Director was removed based on findings that he had sexually harassed a subordinate female employee (inappropriate physical contact and unwelcome sexually related comments), inappropriately touched other female employees, and retaliated against the Associate Director when he attempted to fulfill his responsibility to ensure employees were not subjected to sexual harassment. The removal action was upheld by the Merit Systems Protection Board.

Example 2. An investigation was conducted based on allegations that a Special Assistant, GS-15, to a high level VHA official engaged in sexually related misconduct and threatening behavior. Subsequently, a proposed 2-grade demotion and approximately \$42,000 reduction in pay was issued based on charges of sexual harassment (inappropriate physical contact, unwelcome sexually related comments), abusive and disruptive behavior, and making false statements regarding a female employee. The employee retired prior to a final decision.

Question 2. Please list all reprisal cases referred to the Secretary from the Office of Employment Discrimination Complaint Adjudication. Describe the action taken regarding each referred case.

The requested list is attached.

Case Summary	Summary of Action Taken
<p>The RMO (Chief of Respiratory Therapy) retaliated against the complainant by attempting to discourage her from pursuing an EEO complaint. Specifically, the RMO threatened to place documents in the complainant's file regarding complaints about her from her co-workers. The RMO questioned the complainant about her contact with an EEO counselor.</p>	Admonishment & training
<p>After the Complainant filed an EEO complaint, the Director of VA facility instructed a Personnel Management Specialist (PMS) to have complainant physically removed from the facility and a nursing course at the facility, in which complainant was enrolled. These actions were found to constitute retaliation.</p>	The PMS received training. The Director retired prior to the date of the OEDCA decision.
<p>Complainant informed the Chief, Transportation Services and others about offensive remarks of a sexual nature made by a male co-worker to a female worker. He also complained about other inappropriate conduct. Later, complainant was called as witness at a hearing on the allegations raised by a female co-worker. Immediately after the protected activity, the Chief and several co-workers engaged in a pattern of harassment such as improper and unfair discipline, making false allegations against him, counseling, and improper charges to leave. EEOC found that the Chief threatened the complainant with further retaliation if he did not withdraw his charges, and that he was encouraging others to harass the complainant.</p>	RMO was reprimanded
<p>The RMO, Chief of Radiology, retaliated against the complainant when he initiated a written complaint concerning the complainant's performance evaluation plan, when there was no record of a performance deficiency.</p>	Training/RMO stepped down to staff radiologist position.

5	<p>The RMO (Associate Director) was motivated by retaliatory animus when he subjected the complainant to hostile environment harassment and disparate treatment based on reprisal. The RMO's actions included making decisions within the complainant's delegated responsibilities without consultation, soliciting negative information about the complainant from a private contractor and detailing the complainant to a lower level position for no legitimate business reason.</p>	<p>Letter of Counseling - This case is still under review.</p>
6	<p>Complainant had previously filed an EEO Complaint in 1991 against the same official alleging nonselection based on race and color discrimination. Final decision rendered at that time indicated no discrimination. Complainant applied for the position of Carpenter worker and was interviewed, but not selected. Reasons given for non-selection were found to be lacking. Interviewing official offered conflicting and inconsistent testimony regarding answers given by the complainant and the selectee during the interview. Evidence of discrimination against complainant on the basis of reprisal was found.</p>	<p>Training</p>
7	<p>After filing an EEO complaint the Complainant received a lower than expected rating for which management could not clearly provide rationale. The Complainant provided justification for a higher rating which management did not dispute. The complainant's former supervisor refused to provide input regarding the complainant's rating although that individual supervised the complainant for the majority of the rating period.</p>	<p>There were 3 RMO's. Two received training and the 3rd was counseled.</p>

8	A co-worker sexually harassed the complainant. The VAMC Director took prompt action to prevent further harassment and directed an investigation. When the investigation findings and recommendations were called into question, a second team was appointed to conduct a review. The Director accepted the Board's findings which included referral of the complainant to the employee assistance program and discipline to both parties. The Director's efforts to implement the recommendations were found to be retaliation.	RMOs were counseled and given extensive training.
9	The complainant was subject to reprisal for engaging in EEO activity when the RMOs (Chief and Assistant Chief of Human Resources) charged him with AWOL four times, gave him an admonishment and a reprimand and gave him memorandums questioning his work.	One RMO no longer works for VA. The other RMO now works at another VA facility and will receive training.
10	Complainant reported to her immediate supervisor that she was physically and verbally sexually harassed by a co-worker. After the report, the complainant and the alleged harasser were involuntarily reassigned to other buildings. The complainant's involuntary reassignment constituted retaliation for reporting sexual harassment.	Training
11	Complainant was retaliated against because of her prior EEO complaint activity. Complainant, a physician and Acting Service Chief, had previously filed a discrimination complaint against both the Chief of Staff and the Director of that facility. Within a short period of time, these officials terminated her entitlement to Scarce Specialty pay. The reasons given for reducing pay were pretext for retaliation.	Training for RMO; other RMO (Director) retired prior to the date of the OEDCA decision.
12	The complainant was subjected to a series of retaliatory actions by the RMOs such as being presented with a list of performance deficiencies, being told she would not be promoted and being given a warning of unacceptable performance.	Counseling

13	Two weeks after filing an EEO complaint against the former Chief of Radiology, the complainant was notified that that individual had complained to the new Acting Chief about her alleged performance deficiencies, and that the complaint would be considered a documented complaint. The complainant filed a written objection with the Acting Chief, claiming retaliation. The former Chief responded by requesting that she be disciplined. Based on the findings that the former chief made negative comments about the EEO complaint process and he requested that the complainant be disciplined for accusing him of retaliation, this constituted evidence of retaliatory intent.	Training
14	Complainant had prevailed in a prior discrimination complaint against one of his supervisors concerning the denial of a step increase and management's refusal to allow him to return to full duty after an absence for health related reasons. While this complaint was pending, he contacted an EEO counselor to complain about a related matter. Shortly after, he returned to duty, and shortly after that, the supervisor assigned a Lead technician to monitor the complainant's work. The reason given for the decision to monitor the complainant's work was a pretext for retaliation.	Training
15	The RMOs (Chief of Staff and Chief, Medical Service) suspended the complainant's clinical privileges in retaliation for the complainant's EEO complaint activity.	One RMO received training. The other RMO (COS) retired prior to the date of the OEDCA decision.
16	Complainant filed a grievance against the Assistant Police Chief. Shortly afterwards, the Complainant's request for advanced sick leave was denied. The complainant also received a negative progress report. Even though management articulated non-retaliatory reasons for its action, EEOC found that their reasons were a pretext for retaliation.	Training

17	Complainant filed an EEO complaint. Less than one month later he was placed in a position that resulted in a two step loss of pay. The complainant received a less than satisfactory rating in the position he was assigned to. Previously he had received at least satisfactory ratings.	One RMO received training. The other employee separated prior to the date of the OEDCA decision.
18	The RMO (Assistant Chief for Environmental Service), who was the complainant's supervisor, asked the complainant to withdraw his EEO complaint and clear the supervisor's name. The supervisor also reminded the complainant of all the good things the supervisor did for him, including creating a job for the complainant. The supervisor's actions constituted retaliation.	RMO died prior to findings.
19	Complainant filed a discrimination complaint against the Chief of Information Resource Management Service on the basis of his race, disability and reprisal for prior EEO activity, when he was not promoted to the position of Computer System Analyst, and when he was harassed and subjected to hostile working conditions. These actions constituted retaliation.	RMO reprimanded
20	After receiving a bachelor's degree, the complainant sought an upgrade of her position. Based upon the advice of the complainant's former supervisor, the Acting Chief decided not to upgrade the complainant's position. Instead, he funded a position that required a Master's Degree, which the complainant did not have. The EEO decision found that the former supervisor's advice to deny the upgrade constituted retaliation.	Training

21	<p>Complainant requested accomodation for a heart condition and filed an EEO Complaint in August 1995, which was settled in 1997. In 1997, Complainant received a written counseling with respect to alleged patient complaints about him. These patients' complaints either wrongly identified the complainant or were unsubstantiated in the record. Afterwards, complainant's schedule was changed without proper notice and he was forced to take annual leave to avoid being considered AWOL. These actions were found to constitute retaliation based on the lack of a credible explanation by management and evidence of comments made of a retaliatory nature.</p>	<p>RMO retired prior to the OEDCA decision.</p>
22	<p>May 1997, complainant requested and was granted 104 hours of sick leave (SL) to cover absences substantiated by a doctor's note. On July 28, 1997, the complainant contacted an EEO Counselor alleging discrimination relating to the denial of his request for annual leave (AL) for a vacation to a foreign country planned for late July and early August. Complainant was absent from work in late July and early August 1997, and when he returned, he requested 104 hours of AL in lieu of SL with a note from his doctor. Request was denied. He was charged AWOL and suspended for 14 days. It was found that the agency's actions in denying the leave were inconsistent and had procedural irregularities which provided evidence of discrimination and retaliation.</p>	<p>RMO Counseled/training</p>
23	<p>Complainant alleged that Dr. RB, his supervisor, had sexually harassed him. Complainant received a letter of reprimand for his conduct during a meeting with Dr. RB, and for his refusal to cover the Lab. Discrimination based on reprisal with respect to the letter of reprimand was found.</p>	<p>Supervisor and Senior Physician were counseled and received training.</p>
24	<p>The complainant was retaliated against by the RMO (Chief, Nutrition and Food Service) when he was suspended, subjected to a hostile work environment and forced to resign in lieu of termination.</p>	<p>Training</p>

25	Complainant alleged that she was sexually harassed from 1989 to 1992 by her supervisor. After management was notified of the allegation, they reacted by ordering her to return from a training conference that the alleged harasser was attending. She was also involuntarily detailed to other duties and her detail was extended repeatedly because of her pending EEO complaint. Preponderance of evidence did not show that complainant was sexually harassed as alleged. However management's response to her allegations was inappropriate and in fact, constituted retaliation.	No action taken
26	Complainant was not selected for the position of Staff Physician. The RMO selected another physician who was unlicensed with less experience. The RMO stated that he did not want any more Arabs in the Nephrology Dept. RMO made unsupported, derogatory remarks about the complainants work habits, race, national origin and religion. The RMO gave a negative evaluation which contradicted the direct supervisor's evaluation of complainant. RMO stated that he intended to adopt a posture to obstruct the complainant's use of the EEO process until the complainant was financially ruined. It was found that the RMO discriminated against the complainant for exercising his right to pursue an EEO complaint.	VHA response pending
27	Complainant previously filed two EEO Complaints in 1993 and 1995. Complainant alleges she was discriminated against when her performance appraisal was downgraded from Outstanding to Fully Satisfactory. It was found that the performance appraisal was improper and constituted reprisal.	VHA response pending
28	Complainant was discriminated against on the basis of race, color, sex and age and reprisal, when he was issued an admonishment.	RMO received 4 hrs training

Complainant alleged that she was discriminated against because of her disability when the agency failed to reasonably accommodate her in violation of the Rehabilitation Act. Complainant also claims that she was harassed and discriminated against in retaliation for engaging in protected EEO activity. Evidence shows that the complainant filed an EEO complaint in 1995 when she was told to continue performing her duties even though she had severe back spasms. Final findings indicated discrimination based on the complainant's disability and in retaliation for her EEO activity and asserting her rights under the Rehabilitation Act.

29

VHA response pending

